# The Solicitors' Journal

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## CURRENT TOPICS

### Revenue Cases to go to the Chancery Division

FROM 1st March next, the LORD CHANCELLOR has announced in an order dated 11th February, 1950, all matters which have heretofore been heard by way of petition or case stated on the Revenue side of the King's Bench Division will be heard before a judge of the Chancery Division. This is a not unexpected rearrangement which has been rumoured for some time in view of the heavy pressure of work in the King's Bench (cf. p. 47, *ante*). The Lord Chancellor's order makes it clear that notwithstanding the transfer the proceedings in such matters will be commenced and will continue, both before and after the hearing, in the King's Remembrancer's Department of the Central Office. It is added that the new order does not affect the trial of proceedings set down for trial in the Revenue list within the meaning of R.S.C., Ord. 36, r. 1B.

### Legal Representation on Tribunals

ENDORSING the recent remarks of the Minister of Town and Country Planning in the Commons that " the modern tendency to shut out legal representation has been very much overdone," the *Law Society's Gazette*, in the issue of February, 1950, adds: " There should not be any attempt by a Government department or local authority to persuade a layman not to be legally represented when he has a right to be, e.g., on appeal against a refusal to grant planning permission." The *Gazette* quotes para. 22 of " 144 Questions and Answers relating to the Town and Country Planning Act, 1947," published by H.M. Stationery Office, as advising: " There is, as a rule, no need to go to the expense of engaging a solicitor or barrister and you can put your case yourself. You are not appearing in a court of law. If the development is large or complicated, however, it may be advisable to get the professional advice of an architect, surveyor or solicitor." An even worse example is quoted from a letter written by a clerk of an urban district council giving notice of a public local inquiry in connection with an appeal against a refusal to permit the erection of a dwelling-house. The *Gazette* states: " As a local authority is almost invariably legally represented at a local inquiry by the clerk or by his deputy or by an assistant solicitor, it seems highly unreasonable to suggest to an objector that he should not himself employ legal representation."

### The Indian Appeals

CITIZENS of this country may well read with pride the message to the Judicial Committee of the Privy Council sent by the Indian Government and read by LORD GREENE on 6th February to the solicitors and counsel who had practised before the committee in Indian cases. The message stated: " The Government of India take this opportunity to place on record their deepest appreciation of the valuable services rendered by the Privy Council to India over a period of more

## *CONTENTS*

than two centuries. During their long connection with Britain and British institutions, nothing has impressed the people of India more than the high sense of detachment, independence, and impartiality which have invariably governed the deliberations and decisions of the Privy Council." Lord Greene said: "We have all been co-operating towards one end," and Sir HERBERT CUNLIFFE, K.C., on behalf of the Bar, spoke of the great pride and satisfaction of English and Indian barristers practising in Indian appeals on hearing the message read. On 7th February the LORD CHANCELLOR handed to Mr. KRISHNA MENON, High Commissioner for India, the Judicial Committee's reply, which said that it was a source of great satisfaction to the committee that it should be considered in India that their duty to these people had been well carried out. "On our side we have gained much by the connection and not least by the pleasure we have had of working in close friendship with the many eminent Indian jurists who have been Privy Councillors. By their quality they have taught us to have confidence that in the future India will continue to have courts in which the rule of law and the highest standards of judicial conduct would be maintained."

### The Critic and the Law

LITERARY critics, art critics, musical critics and all the other scribes whose praise or blame may make or mar the financial success of those who devote their life to creative work will, it is to be hoped, study the careful and unambiguous speech of LORD PORTER in the case of *Turner* v. *Metro-Goldwyn-Mayer Pictures, Ltd.*, on the rights of those who are criticised. His lordship's apt quotation from the judgment of Lopes, L.J., in *Nevill* v. *Fine Arts and General Insurance Company* [1895] 2 Q.B., at p. 171, which he said "recognised the right of defendants to protect their interests, even when they are only pecuniary ones," may perhaps be paraphrased: "*Cet animal est mechant: quand on l'attaque il se defend.*" The criticised may take such steps as are not illegal to prevent the critic from having the opportunity of damaging the potential success of creative work. It is war *a l'outrance* for those who have the means to carry their case to the House of Lords. For the others, there is only the deferred legal aid scheme or the resources of courage and determination belonging to a Whistler or a Sitwell in seeking to vindicate their work. A Keats may succumb. Perhaps the best results can be achieved both in art and criticism when critics realise their heavy responsibilities and place less emphasis on the question of what are the limits of their freedom to criticise.

### The Solicitors' Managing Clerks' Examinations

APPLICATIONS by prospective candidates at the second examination for solicitors' managing clerks' certificates, which will be held by The Law Society and the Solicitors' Managing Clerks' Association in May, must be received at the Association's offices by 1st March. The existence of these examinations ought to stimulate solicitors' clerks to greater efforts in their work, and there can be little doubt that solicitors who encourage their clerks to enter for them will benefit to no small extent in this way. Successful candidates will be able to take a legitimate pride in their achievement and reach a certain standing which has hitherto, perhaps, been denied them in an otherwise satisfying job. Both general and specialised certificates are awarded under the main headings of conveyancing, litigation and accounts. Forms of application may be obtained by writing to the Honorary Secretary, Solicitors' Managing Clerks' Association, Maltravers House, Arundel Street, London, W.C.2.

### Crown Property and Rates

A MINISTRY of Health Circular (No. 17/50) dated 7th February, 1950, states that direct application by rating authorities to the Treasury Valuer (Rating of Government Property Department), Palace Chambers, Bridge Street, London, S.W.1, for contributions in lieu of rates in respect of Crown occupation, is still the correct procedure since 1st February, when the Inland Revenue Department became responsible for rating valuation generally. The Treasury Valuer will, as heretofore, be willing to discuss any such application with a representative of the rating authority, but the authority may find it of value to avail themselves of the services of the Valuation Officer of the Board of Inland Revenue in discussing with the Treasury Valuer the appropriate basis for any property. The Minister of Health has been informed by the Board of Inland Revenue that they are willing that the Valuation Officer's services shall be available to the rating authority for this purpose, and it is open to them to approach the Valuation Officer in their district when they are dealing with any particular property.

### Pawnbrokers' and Hawkers' Licences

THE Finance Act, 1949, made alterations in the arrangements for certain excise licences and provided that their collection should in future be undertaken in England and Wales by county and county borough councils. The licences in question are those required by moneylenders, pawnbrokers, hawkers and the keepers of late night refreshment houses. By the Minor Licence Duties (Transfer to Local Authorities) Order, 1950 (S.I. 1950 No. 130), the transfer of responsibility for these licences from the Board of Customs and Excise to county and county borough councils will take effect on 1st April next. After that date all applications for licences and all correspondence connected with them should be addressed to the local government authority responsible in the applicant's area for driving, car and other similar licences, and not to officers of the Board of Customs and Excise. County and county borough councils in England and Wales have now received from the Ministry of Health a circular briefly summarising the effect of the new order. The form of licences and other documents used in connection with them will not be materially altered by this transfer of responsibility. In future, the revenue collected in this way will go in relief of the rates in the area of collection. The total revenue for England and Wales is about £50,000 per annum. Apart from this change of administrative responsibility, other alterations made by the Finance Act in these licence duties are that licences for hawkers and pawnbrokers will now run for twelve months from the date on which they are taken out instead of for a fixed year. The licence duty for late night refreshment houses is simplified, and the different rates of duty for refreshment houses of differing rental values have been abolished. The rate of duty for all refreshment houses for a year will now be 21s. The licences for moneylenders remain unchanged. Ministry of Health Circular No. 18/50, dated 31st January, explaining these matters to county and county borough councils, is accompanied by specimen copies of the various licences and forms, with a note of alterations which will be required when these are printed by county and county borough councils for their own use, and a memorandum setting out the method of administration used hitherto by H.M. Commissioners of Customs and Excise. There is also enclosed a list of the current licensees and the addresses of their premises in the council's area of jurisdiction.

# THE PERSISTENT CRIMINAL

THE Criminal Justice Act, 1948, includes as one of its principal objects a complete overhaul of the methods of treatment of offenders of all ages. It recognises that, in the light of modern thought, the old methods of dealing with criminals were in some instances out of date, and aims to introduce a greater variety and more flexibility into the treatment of offenders, particularly those who have been in trouble before.

In practice it has been found, as might indeed be expected, that the Prison Commissioners are better able than the courts to decide on the particular types of treatment most likely to be effective in the case of persons who are deprived of their liberty. Hence penal servitude, hard labour and the prison divisions have been abolished by the Act, and in all such cases the sentence is now simply one of "imprisonment," though the terms for which such sentence can be imposed are not changed, so that where, for example, a maximum sentence of five years' penal servitude is prescribed, the maximum is now, under the new Act, five years' imprisonment. The Prevention of Crime Act, 1908, which dealt with the habitual criminal, but was in practice seldom used, has also been repealed.

The power to sentence persons under twenty-one years of age to imprisonment is restricted by the Act, but it is not proposed to deal further with this aspect of the subject in the present article, the purpose of which is to consider the forms of treatment available under the Act in respect of persons who have attained the age of twenty-one years, and moreover have shown a tendency to persist in their criminal ways despite previous convictions and treatment.

The subject of the treatment of persistent offenders is a provocative one, but whatever viewpoint may be taken by the individual student of this difficult question it can hardly be contested that effective treatment must be aimed at securing the reformation of the offender where possible, and protecting the public from his depredations where reformation is not possible. This, at any rate, appears to be the method of approach adopted by the Legislature in passing the Criminal Justice Act of 1948.

As it is obvious that to reform the young offender is likely to be easier than to reform the older and more determined criminal, the Act has taken the age of thirty years as the deadline. Below this age the emphasis is on reformation; but from the age of thirty onwards, whilst the methods of attempting reformation remain available in suitable cases, the emphasis is on prevention of further offences.

The new methods of treatment which have been introduced by the 1948 Act are known respectively as "corrective training" and "preventive detention." Both are applicable only to persistent offenders convicted on indictment of an offence punishable with imprisonment for two years or more, and the former may be applied to offenders of twenty-one years of age or more, whilst only those who have attained the age of thirty years are eligible for the latter.

The relevant section of the Act is s. 21. To bring an offender within the provisions of that section it is necessary to prove certain previous convictions against the offender; it is not necessary to prove in addition, as was the case under the old Prevention of Crime Act, 1908, that he was also "leading persistently a dishonest or criminal life."

The previous convictions which must be proved are: (1) in the case of corrective training, two previous convictions, either summarily or on indictment, of offences punishable on indictment with two years' imprisonment or more; and (2) in the case of preventive detention, three previous convictions, all on indictment, of offences punishable as above, and in respect of at least two of which convictions the offender was sentenced to borstal training, imprisonment, or corrective training. In both these instances previous convictions before the offender attained the age of seventeen are to be ignored.

If the offender qualifies as above, then the court must be satisfied as to "expediency"; as regards corrective training, it must be deemed "expedient with a view to his reformation and the prevention of crime that he should receive training of a corrective character for a substantial time," and as to preventive detention, it must be considered "expedient for the protection of the public that he should be detained in custody for a substantial time." In both cases the court must also be satisfied that, if the offender is released before the expiration of his sentence, a period of supervision should follow.

Lastly, before sentencing an offender under s. 21 the court must consider any report or representations by the Prison Commissioners as to the offender's physical and mental condition and suitability for such a sentence.

In such circumstances the court is empowered, but not compelled, to pass, in lieu of any other sentence, a sentence of corrective training of two to four years, or of preventive detention of five to fourteen years, as the case may be. It will be noticed that eligibility for sentence under s. 21 of the Act does not oust the power of the court to impose any other sentence, such as imprisonment, if it sees fit to do so.

If, however, the offender is released on licence before the expiration of his sentence under s. 21, he may be placed under the supervision of a society or person specified in the licence, as to which provision is made by Sched. III to the Act. Supervision after such release is not, of course, mentioned in the sentence of the court, that being a matter within the sole discretion of the Prison Commissioners and the Home Secretary.

Apart from the power to sentence to corrective training or preventive detention contained in s. 21 of the Act, there is a further provision relating to persistent offenders contained in s. 22. This section, like the preceding one, applies to offenders convicted on indictment of an offence punishable with imprisonment for two years or more, but, unlike s. 21, it applies only where the sentence actually imposed by the court is imprisonment for twelve months or more. If such an offender has either been twice previously sentenced, either summarily or on indictment, to borstal training or imprisonment, or once previously to corrective training, the court must order him to be "subject to the provisions of this section" (s. 22) for the twelve months following his discharge from prison, unless the court otherwise determines having regard to the circumstances, including his character. This means that he must inform the "appointed society" of his address from time to time, the appointed society being one appointed for the purpose of the section by the Prison Commissioners and approved by the Secretary of State. Should he fail to inform the society accordingly, the society may give notice thereof to the Commissioner of Police of the Metropolis, and from that date the offender becomes liable to the provisions of Sched. IV to the Act, which requires him to register at his local police station and to report there monthly in person. Failure to do so without reasonable excuse is an offence punishable on summary conviction with six months imprisonment.

As to the previous convictions and sentences which must be proved against an offender in order to bring him within s. 21 or s. 22, it is provided by s. 23 that notice of them must be given to the offender and to the court at least three days before the trial, and that such convictions and sentences must be either admitted by the offender or proved to the jury.

So much, therefore, for the new forms of treatment available for the persistent adult offender; but since nothing is said in the Act, and little has been published elsewhere, as to the actual form that corrective training and preventive detention are to take in practice, it is not surprising that courts of quarter sessions and assize should be in some doubt as to when they ought to exercise their new powers. As a result, the matter has on several occasions already been brought before the Court of Criminal Appeal, and a certain amount of guidance is now available.

The first case to be considered is *R.* v. *Apicella* (1950), 94 SOL. J. 51, which was an application to the Court of Criminal Appeal for leave to appeal against conviction. The appellant had been sentenced to two years' corrective training. In dismissing the application, Birkett, J., said: "The mere fact that the conditions of the statute dealing with corrective training are fulfilled is by no means a reason why a sentence of corrective training should be imposed. The sentence of corrective training under the Criminal Justice Act, 1948, s. 21, is designed, in the view we take, rather to import an extension of the principles underlying borstal treatment . . . With regard to both preventive detention and corrective training it is the duty of the court . . . to weigh up the facts and circumstances of the case and then decide the appropriate sentence." In this case the applicant, though qualified for corrective training by reason of previous convictions, had had no conviction at all for eight years and only one of his previous convictions was for dishonesty, and Birkett, J., remarked that the case was not one, in the view of the Court of Criminal Appeal, in which a sentence of corrective training should have been imposed. Since, however, the matter came before that court purely as an application for leave to appeal against conviction, the court could do nothing about the sentence, which accordingly was allowed to stand.

In *R.* v. *Askew* (1949), 113 J.P. 511, the appellant had been sentenced to seven years' preventive detention for obtaining £150 by false pretences; he had eight previous convictions, the last one being in 1938. Goddard, L.C.J., substituting a sentence of eighteen months' imprisonment, said: ". . . this court feels that in many instances courts are passing this class of sentence in cases where, but for the recent substitution of imprisonment for penal servitude by the Criminal Justice Act, 1948, the sentence would have been penal servitude for the same number of years. We think it right to emphasise that, in our opinion, it was not the intention of s. 21 (2) of the Act of 1948 to substitute preventive detention for the old sentence of penal servitude . . . Preventive detention ought to be passed only where prolonged detention is necessary for the protection of the public . . . the court is of opinion that preventive detention should be regarded as an exceptional sentence and ought not to be given merely in lieu of imprisonment. Where it is given it ought to be for a long period. As a rule five years would only be appropriate in the case of a man of advanced age who habitually commits crime, it may be of a petty nature, who must therefore be kept in custody, but who, it may be hoped, will not end his life in prison . . ."

In *R.* v. *Barrett* (1949), 113 J.P. 512, Lord Goddard stated that very much the same considerations apply to sentences of corrective training as those given in *R.* v. *Askew* for preventive detention, and he went on to say that it is of little use giving a sentence of corrective training of a length which will not enable real reform to be attempted.

In two cases recently before the Court of Criminal Appeal sentences under s. 21 of the Act of 1948 have been set aside, and sentences of imprisonment substituted, because of failure to comply with the requirements of s. 23 as to proof of service of the notice of previous convictions. In *R.* v. *Dickson* (1949), 93 SOL. J. 711, although the appellant had in fact been served with the proper notice of previous convictions and sentences and had signed a statement admitting them, the notice was not formally proved at the trial nor was the appellant then asked if he admitted the convictions and sentences. In *R.* v. *Allen* [1949] 2 All E.R. 808 the facts were substantially the same. In both cases the court held that it is not sufficient merely that there shall have been actual compliance with the requirements of s. 23; compliance must be strictly proved. Further, the defendant, notwithstanding that he may have signed a statement admitting the convictions and sentences specified in the notice, should be asked in court whether he admits them; if he does so, well and good; if not, they must be proved. Lastly, in order to minimise the risk of mistakes or omissions, Lord Goddard expressed the view that either an averment should be put in the indictment of the previous convictions so that the attention of the court may be directed to them, or alternatively a copy of the notice which is served on the offender should be attached to the indictment; this, however, is not required by law, but is merely an expression of opinion by the Court of Criminal Appeal as to the practice which should be followed.

By s. 80 (2) of the Act of 1948, it is provided that any reference in the Act to a previous conviction "shall be construed as a reference to a previous conviction by a court in any part of Great Britain." In *R.* v. *Murphy* (1949), 93 SOL. J. 756, the Court of Criminal Appeal held that these words did not include a previous conviction in Northern Ireland.

In conclusion, two decisions of the Court of Criminal Appeal as to the making of a supervision order under s. 22 of the Act should be mentioned. In *R.* v. *Keeler* (1949), 93 SOL. J. 743 quarter sessions had sentenced the applicant to eighteen months' imprisonment, but had not made a supervision order and had stated no reasons for not doing so. The Lord Chief Justice pointed out that s. 22 (1) is mandatory and that, where it applies, a supervision order must be made unless, having regard to the circumstances, including the character of the offender, the court otherwise determines, and that where no supervision order is made the court should state their reasons. In *R.* v. *Speakman* (1949), 93 SOL. J. 728 it was held that a supervision order could only be made on a sentence of imprisonment for twelve months or more, and not on a sentence of corrective training or, presumably, preventive detention. In such cases, the offender automatically comes under the provisions of Sched. III to the Act, and therefore the provisions of s. 22 (1) as to supervision orders do not apply.

E. G. B. T.

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Mr. E. THOMAS, of Exeter, has been appointed senior assistant solicitor to the Corporation of Reading.

Mr. J. C. KINOULTY, deputy town clerk of Bilston, has been appointed assistant solicitor to the West Midland Gas Board.

***Costs***

# RECOVERY OF AMOUNT

WE have been asked on more than one occasion what remedies, other than his right to sue, are open to a solicitor who has rendered his bill of costs to his client and who has been unsuccessful in his attempts to secure payment thereof; and we propose to pause at this juncture in our consideration of the law and practice relating to the *quantum* of costs to examine this point.

In the first place the solicitor has had for a very long time a common-law right of lien against sums recovered by him on a client's behalf. This right is now statutorily recognised by s. 69 of the Solicitors Act, 1932, which entitles a solicitor to a charging order against any property "recovered or preserved through his instrumentality" in respect of his costs. It will be noticed that the right exists only in respect of any property recovered in an action, but the lien attaches even where the action has been compromised, since it is still property recovered in an action through the instrumentality of the solicitor (see *McLarnon* v. *Carrickfergus U.D.C.* [1904] 2 Ir. R. 44, and, earlier, *Ratcliff* v. *Swift* (1888), 32 SOL. J. 787).

The common-law right did not extend to real property, but s. 69, *supra*, applies to any property recovered or preserved, and so would apply to real as well as personal property. It only applies, however, to property recovered or preserved in an action, and property recovered merely as a result of negotiation, where there is no action, is not subject to a lien for the solicitor's costs (see *Meguerditchian* v. *Lightbound* [1917] 1 K.B. 297, where Rowlatt, J., observed: "I can find no authority for a lien of this character upon the fruits of a mere negotiation conducted by the solicitor"). Section 69, *supra*, does, however, apply to any money or property recovered in an arbitration (see ss. 17 and 19 of the Arbitration Act, 1934).

The lien on money or property recovered, moreover, only extends to the costs incurred in recovering or preserving that particular property, and it does not extend to all costs which the client may owe the solicitor (see *Waterland* v. *Searle* [1897] W.N. 163 for a general statement of the law on this point). Section 69, it will be observed, expressly limits the right to a charging order for costs in an action to the property recovered or preserved in that action, and no general lien is granted thereunder in respect of all costs which the client may owe to the solicitor.

So much then for the solicitor's right of lien against clients' property or funds. His right is, it will be noticed, somewhat limited, and it is not often that this right can be enforced, since, as we have seen, it is limited, in any case, to the costs of the action in which the property is recovered or preserved through the instrumentality of the solicitor.

What other right has the solicitor? He has a very valuable one in his right of lien against the client's documents. This right of lien over the client's documents is a long-established one, and, moreover, is a general right which extends to the whole of the solicitor's costs, and not merely the costs of the matter to which the documents relate (see *Colmer* v. *Ede* (1870), 40 L.J. Ch. 185). Thus, a solicitor will have a lien on a conveyance of property for his costs and expenses not only in connection with that property, but also in respect of general matters in which he has acted on the client's behalf (see the old case of *Ex parte Sterling* (1809), 16 Ves. 258). But he has no lien on the will of his client (see *Balch* v. *Symes* (1823), Turn. & R. 87). Nor has he on the books of a company, which must, of course, be kept at the registered office thereof (*Re Anglo-Maltese Hydraulic Dock Co.* (1885), 54 L.J. Ch. 730).

It is, of course, only the client's own documents against which the solicitor has a lien, and if documents belonging to someone else are handed to him for any purpose, then he cannot exercise a lien over them in respect of costs. Thus, if a solicitor for a proposed mortgagee is handed the borrower's documents in order that he may investigate the title, and the deal goes off, then the solicitor cannot retain the proposed borrower's documents until his bill is paid, for such documents do not belong to his client; and this would be so even where the intending borrower had agreed to pay the proposed mortgagee's costs. Reference may here be made to the case of *Barratt* v. *Gough-Thomas* (1945), 89 SOL. J. 553; 2 All E.R. 414, where a solicitor was held not to be entitled to exercise a lien over the title deeds of property in a case in which he was acting for both mortgagor and mortgagee.

Where there is a change of solicitors during the course of the cause or matter the question of the original solicitor's lien for his unpaid costs becomes a little more complicated. The principle is that the original solicitor has a lien on the documents for his costs, and he will be entitled to exercise that lien until his costs are paid (see *Re Walker* (1893), 37 SOL. J. 242; *Austin* v. *Macnamara & Co.* (1895), 40 SOL. J. 71). Further, the client is not entitled to see the documents or to take copies thereof, for, as was observed in *Re Biggs and Roche* (1897), 41 SOL. J. 277, "it would destroy the entire principle of a solicitor's lien if the client was to be at liberty to see the documents in the possession of the solicitor and to carry away their contents in his head or to make copies of them."

This is subject, however, to the important reservation that if the position of third parties is likely to be prejudiced by the exercise of the lien, then the solicitor will have to hand over the papers to the new solicitors, subject to his lien, in order that the cause or matter may proceed (see *Re Boughton; Boughton* v. *Boughton* (1883), 23 Ch. D. 169; *Boden* v. *Hensby* [1892] 1 Ch. 101).

It may be accepted as a general principle that if a solicitor takes security in some form for his costs, whether in cash or by way of a charge on a valuable asset, then he gives up his right of lien (see *Re Taylor, Stileman & Underwood; ex parte Pryne-Collier* [1891] 1 Ch. 199). If he intends that his lien shall remain he should so inform his client. This is so whatever the amount of the security taken (*Bissell* v. *Bradford and District Tramways* [1893] W.N. 44), with the result that if the security obtained in respect of the costs is insufficient and a balance remains after giving credit for the security the solicitor may find that he has lost his right to exercise a lien in respect of the balance due. Attention is drawn to the case of *Re Morris* [1908] 1 K.B. 473, where the judgments delivered in the Court of Appeal are particularly illuminating on this question of security and its effect on lien.

The position where there is a change in the constitution of a partnership of solicitors acting on behalf of a client may give rise to difficulty, so far as the question of lien is concerned, but in general the principle to be applied is that the original firm can exercise a lien in respect of the costs incurred up to the date of the change in the partnership only against the documents which came into its possession prior to the date of the change; whilst the new partnership will be able to exercise a lien only against documents that came into its possession after the date of the change. The old case of *Re Forshaw* (1847), 16 Sim. 121, provides an instance of this principle.

It is useful to bear in mind that, although a bill of costs may be statute-barred because it is more than six years old, yet the right to exercise a lien against documents in respect thereof will remain (see *Re Carter; Carter* v. *Carter* (1885), 55 L.J. Ch. 230).

If a solicitor discharges his retainer his right to exercise a lien against his clients' documents is lost. Thus, if he refuses to act further in a matter he cannot exercise his lien on the documents in respect of his unpaid costs (see *Bluck* v. *Lovering* (1887), 35 W.R. 232).

It is perhaps as well to remember that this common-law right of lien extends only to the amount of the solicitor's unpaid costs, and does not cover loans made by the solicitor, or debts arising other than in respect of costs. There is an old case (*Worrall* v. *Johnson* (1820), 2 J. & W. 214) which exemplifies this point.

These are two of the alternative remedies to which a solicitor may resort in order to secure payment of his unpaid costs, where he does not wish to sue. He still has this latter remedy, however, and if he wishes to exercise it then attention must be paid to the requirements of the Solicitors Act, 1932, in relation to the delivery of bills of costs. Thus a solicitor cannot sue on a bill of costs until one month after delivery thereof in accordance with the Act (s. 65 (1)), subject to the fact that he may take action before the expiration of one month if he has reason to believe that the party chargeable is about to leave England, become a bankrupt or compound with his creditors, or do any other act which would tend to prevent or delay the solicitor in obtaining payment. Further, the bill must be signed by the solicitor or must be accompanied by a letter so signed.

The costs must be rendered in detail, otherwise there has been no bill delivered (*Duffett* v. *McEvoy* (1885), 10 App. Cas. 300), and this will apply although the Solicitors' Remuneration (Gross Sum) Order, 1934, authorises lump-sum bills in connection with work to which Sched. II of the Order of 1882 applies (see *Re a Solicitor; re Taxation of Costs* (1947), 91 SOL. J. 192).

Such are the remedies available to a solicitor in respect of his unpaid bill of costs and, in practice, it is frequently found that the exercise of a lien on the documents belonging to the client is the most effective in producing speedy results.

J. L. R. R.

***A Conveyancer's Diary***

# SOURCE OF MAINTENANCE PAYMENTS UNDER INHERITANCE ACT

THE report of the decision in *Re Simson* [1950] Ch. 38, brings out a point under the Inheritance (Family Provision) Act, 1938, for which there has so far existed no direct authority, viz., that if an order is made for maintenance under that Act the provision need not be charged primarily on the residuary estate. The testator, who had for a long time been living separate from his wife, by his will left her a legacy of £1,000 and the moneys payable under certain policies of insurance, which amounted to a further £1,600. He left legacies of a total value of £6,000 to his housekeeper and a legacy of £500 each to two nephews, and the residue of his estate to his son and daughter in equal shares. The net value of the estate for the purposes of the Act was approximately £14,000, so that after deduction of the various legacies and the duty thereon, all the legacies being given free of duty, an amount of approximately £3,000 was available for distribution under the residuary gift. Under the terms of a separation deed the wife had been entitled to receive £200 a year, but this payment had ceased on the testator's death.

The first question to be decided on the widow's application for maintenance under the Act was the amount to be awarded to her. It is not unusual in cases where the applicant has been receiving payments from the testator under a separation agreement to order maintenance at such a rate that, together with any benefits that she may receive under the will, the applicant should receive the same amount under the will (as varied by the order) as she had been receiving under the separation agreement. This was the course taken in this case. The sum of £2,600 to which the applicant was entitled under the will was taken as producing an annual income, at 4 per cent., of £104, and the amount of the provision which was thus left to be made up under the application was £96 a year, which was the amount of the award. On this part of the decision it is only necessary to say that no percentage rate is laid down, either in the Act or by rules of court, as the rate for calculating the income of a capital sum, but 4 per cent. does not appear to be too high a rate to adopt in the necessarily somewhat rough and ready calculations in which the administration of this Act always involves the court, having regard to current stock exchange rates and the successful applicant's freedom, if he or she so desires, to invest any capital sum to which he or she may be entitled under the will in the purchase of an annuity.

The next question was out of what part of the estate the provision should be made, and it was at this point that Vaisey, J., referred to the all too prevalent illusion that provision under the Act is normally or primarily made out of residue. The learned judge mentioned cases, such as where the testator had left a very large pecuniary legacy to a perfect stranger and a small residue to members of his family to whom he had some moral obligation, when this would obviously be a mistake; and reference was made to s. 3 of the Act as supporting the view that in this matter the court has a perfectly free hand, since that section provides that, where an order is made under the Act, the will has effect, and is deemed to have had effect from the testator's death, as if it had been executed with such variations as may be specified in the order for the purpose of giving effect to the provisions for maintenance thereby made. To this it may be added that, under subss. (2) and (3) of s. 1 of the Act, maintenance is normally to be provided out of the income of the testator's net estate, and the only way in which this requirement can be satisfied in a case where the amount available for distribution under the residuary gift is small is, in effect, to charge pecuniary legacies with payment of an annual amount in favour of the applicant. On this principle, and if it had not been for an additional circumstance to which reference will be made later, the annuity of £96 required to bring up the income desired under the testator's will to £200 a year would have been charged on and payable out of the legacies given by the testator to his housekeeper and his nephews and the residue left to his children, in the proportions which these several benefits bore to each other. On a rough calculation this would have meant that of the total amount of £96 a year the sum of £55 a year would have become charged on the income of the legacies of £6,000, and £9 a year and £32 a year, respectively, on the income of the

legacies given to the testator's nephews and the gift of residue to the testator's children.

But when the parties to this application had been before the master the testator's widow conceded that she made no claim against the testator's nephews, and expressed her willingness to have the legacies left to them paid in full. This, in the view of the learned judge, was an ill-considered step, probably made under the misapprehension that if maintenance were to be awarded by the court at all it would necessarily be awarded so as to fall on and come out of the testator's residuary estate, and that as a necessary consequence the legacies left by the testator to his nephews would in any event be paid in full. It does not appear whether the wife in fact took any active steps to withdraw her disclaimer when this misapprehension was dispelled, but the court considered that she was not at liberty to go back on it. This, however, was doubtless due to the fact that by the time of the hearing the legacies in question had in fact been paid in full; cf. in this connection *Re Cranstoun* [1949] Ch. 523, which was recently discussed in this diary at p. 72, *ante*. The order which was eventually made, therefore, declared that the testator's will should be deemed to have had effect as from his death as if it had contained a bequest of a sum of £55 per annum payable to the plaintiff during her widowhood out of the income of the legacies made to the housekeeper, and a sum of £32 similarly payable out of the residuary estate given to the testator's children.

As has been already mentioned, the two legacies to the testator's nephews in this case had been paid before the hearing of the widow's application—whether before that application was made does not appear from the report. In this connection the learned judge pointed out that in any case in which an application under the Act is pending or impending, the executor distributes the estate at his risk; and no distribution to beneficiaries (as opposed to other payments made in due course of administration, such as the payment of debts, duties, etc.) should be made while there is any possibility or expectation that an application under the Act may be made. A distribution to beneficiaries while an application is still possible "adds further embarrassment to an already embarrassing jurisdiction." This is an admonition which all who have to advise personal representatives should constantly bear in mind, and indeed in most cases no greater delay in distribution will be occasioned by waiting for the expiration of the period during which an application under the Act is possible. That period is six months from the date on which representation in regard to the testator's estate for general purposes is taken out (s. 2). In the ordinary case of distribution under a will no difficulties are likely to arise, at any rate if probate is obtained soon after the death, as the six months' period under the Act will then as likely as not expire before the end of the executor's year. But where the deceased dies intestate the position may be different, as the decision in *Re Bidie* [1949] Ch. 121 shows. In that case the deceased apparently left no will and a grant of letters of administration was obtained. A will was subsequently discovered and the original grant of representation was thereupon cancelled in favour of a grant of probate. It was held that an application under the Act made within six months of the second grant was in time, although made after the expiration of six months from the date on which the first grant had been obtained.

It is obvious, therefore, that cases may arise in which an application under the Act will have to be considered although made a considerable time after an estate has been distributed on the footing of an intestacy or of a will which is subsequently found to have been revoked by a later will. This must be regarded as one of the risks ordinarily attendant upon the office of a personal representative, and one which cannot be avoided. In practice it is likely to be mitigated by the circumstance that a late applicant under the Act will often have received benefits under the earlier distribution to which he or she is not entitled under the terms of the subsequently discovered will, and this is an event which should predispose all concerned to consider the advantages of adjusting their differences by means of some family arrangement.

"A B C"

## *Taxation*

# LAND TAX

It is important for conveyancers to be familiar with the provisions of the Finance Act, 1949, relating to land tax, for certain matters call for attention without delay, and others will always have to be borne in mind when acting for a purchaser of property which is subject to land tax.

Any property on which the annual charge of land tax for the year 1949–50 would be less than 10s. is exonerated from the tax. This will be done automatically if the land tax authorities are aware of the position, but it frequently happens that a charge of an amount exceeding 10s. covers land which has long since been divided into separate ownerships or occupations, some or all of which would bear a charge of less than 10s., but no formal apportionment has been made. In the case of any such property which was in separate ownership or occupation on 25th March, 1949, application for an apportionment should be made not later than 24th March, 1950, in order to exonerate the parts which would bear a charge of less than 10s. Application can be made at a later date, so as to secure exoneration for the future (if the property were separately owned or occupied on 25th March, 1949), but an application which is made after 24th March, 1950, will not operate retrospectively.

In any case in which land is not exonerated from the tax, immediate consideration should be given to the question of whether it is advisable to apply for voluntary redemption. If application is made not later than 31st March, 1950, the tax can be redeemed by payment of a capital sum equal to twenty-five times the tax assessed for the year 1939–40. If application is delayed until after that date, the price of redemption will be twenty-five times the annual charge for the year 1949–50, which may in many cases be higher.

From and after 1st April, 1950, in acting for a purchaser of property which is subject to land tax, a solicitor should be careful to advise his client that he will become liable to redeem the tax compulsorily by paying twenty-five times the annual charge, and on completing any such purchase notification of the transaction must be forwarded to the Revenue authorities, under a penalty of £50. This is an additional point for a solicitor to bear in mind on the completion of a purchase. Similar rules apply on the grant of a lease for a term of twenty-one years or more (when the tenant will become liable to redeem the land tax), and on the assignment of a lease which on 1st April, 1950, has not less than fifty years unexpired.

There are a number of other provisions in the Finance Act, 1949, relating to land tax, but the above are those with which a practitioner will be most concerned.

C. N. B.

***Landlord and Tenant Notebook***

# DEALINGS IN FURNITURE

VARIOUS consequences may ensue when a landlord and tenant of controlled premises engage in dealings, mutual or otherwise, in furniture. In *Maclay* v. *Dixon* [1944] 1 All E.R. 22 (C.A.) the transaction took place before the grant of the tenancy, the owner of a dwelling-house being willing to let it provided the letting was not affected by the Rent, etc., Restrictions Acts then in force. The intending tenant had some furniture, and between them he and the landlord agreed that the landlord should buy it and then let the house, together with the furniture, to the vendor. It was held that the Acts did not apply; it was perfectly legitimate for two people to sit down and work out a plan to prevent such application.

In *Jozwiak* v. *Hierowski* [1948] 2 K.B. 9 (C.A.) "the whole transaction was coloured with a charitable element which did not make for precision," as Asquith, L.J., put it. The action was for possession, the issue being whether the Acts applied. The plaintiff had bought (from the same vendor) a house and seven pieces of furniture, which he let together to the defendant. No rent was paid for the first week or two. The tenant then paid £4 for one month; after that £6 a month for four successive months, and thenceforward £10 a month. In the meantime, the amount of furniture on the premises had been increased; there were some nineteen pieces bought by the defendant tenant for the plaintiff's account, and six pieces gratuitously supplied by an organisation whose function it was to make provision for refugees (the plaintiff and defendant were both such). It is not clear that increases in rent synchronised exactly with increases in furniture; what mattered most in the end was that the evidence showed that there was a contractual undertaking by the plaintiff *from the first* to supply the defendant with a substantially furnished dwelling, and this had been carried out. The Court of Appeal, negativing a conclusion that the contractual rent was £6 a month, in fact considered that £4 was the governing figure and that the first seven pieces alone were enough to take the letting out of the 1920-39 Acts; but held also that even if they were wrong on that finding they were satisfied that the nineteen pieces bought by the defendant for the plaintiff's account, though not available to the defendant when he first moved in, had been supplied in pursuance of a contractual undertaking which *from the first* was to provide the tenant with a "substantially" furnished letting.

The importance of the last point was shown in *Bowness* v. *O'Dwyer* [1948] 2 K.B. 219 (C.A.), in which claim and issue were the same but facts very different. The plaintiff agreed that when he let the premises (one room) together with furniture at 30s. a week, the value of the furniture to the tenant would be some 3s. 6d. a week, but the 30s. had since been reduced by the local furnished houses rent tribunal to 8s. The tenant had sued him for excess payments over "normal profit," which the county court assessed at 13s. 6d. a week. On the strength of this he now contended that the 3s. 6d. should be compared with either 8s. or with 13s. 6d. Upholding the decision of the court below, the Court of Appeal pointed out that the proviso to s. 12 (2) of the Increase of Rent, etc., Restrictions Act, 1920, on which the plaintiff relied, referred to premises "*bona fide* let" at a rent which included payments for furniture; this imported a test as to the state of mind of the landlord. The only time at which such an inquiry could usefully be made was the time when the contract of letting was made. The amendment made by s. 10 of the Rent, etc., Restrictions Act, 1923, which introduced the "value to the tenant" test, strengthened this conclusion; fluctuations might be caused by changes in the identity and the circumstances of the tenant as well as by the passage of time on the furniture itself; hence, for the sake of certainty alone, it was desirable that the ratio should be fixed once and for all at the time when the letting was made.

Academic lawyers might welcome a case arising out of a letting of a dwelling-house together with furniture which one party or both parties regarded as junk, but which was in fact and was found to be valuable antiques.

More recently, *Welch* v. *Nagy* (1949), 94 SOL. J. 64 (C.A.), arose partly out of a sale of furniture by landlord to tenant. The tenant, defendant in the action, took a house together with furniture for a year, the agreement giving him an option to renew for a second year. His landlord sold him the furniture during the first year, and later sold the house and purported to sell the furniture to the plaintiff. The defendant wrote exercising his option, erroneously and by mistake describing the house as furnished. The second year drew to its end and the parties started negotiations for a new tenancy, and in the course of the correspondence the defendant purported to confirm agreement to continue "under the same conditions as up to the present." The result of the negotiations was a tenancy from month to month, and when the plaintiff, having given notice to quit, sued for possession, the defendant pleaded that the tenancy was protected.

The landlord succeeded in convincing the county court judge that the tenant had estopped himself from setting up that the tenancy was of an unfurnished house, a decision which did not commend itself to the Court of Appeal, both because the reference to the furniture had been made by mistake and because there can be no estoppel against a statute which creates status. But for present purposes what is of interest is a *dictum* of Asquith, L.J., based on the authorities already cited, to the effect that the purchase of the furniture during the original tenancy did not convert that tenancy into an "unfurnished" one. In fact the defendant had held the premises under three successive tenancies; people who speak of "extending" or "continuing" a tenancy sometimes overlook the fact that what happens is a new grant.

### ASSIGNMENT OF FAG-END OF PROTECTED TENANCY

*Dollar* v. *Winston* (1949), 65 T.L.R. 748, has given us yet another authority on the reasonableness or otherwise of the refusal of consent to a proposed assignment of a protected tenancy which is drawing to its contractual end. A short summary of the development of the law on this point, which began only a few years ago, may be useful, though the Landlord and Tenant (Rent Control Act), 1949, has had a discouraging effect on those who seek to assign such tenancies for commercial reasons.

The process began with *Re Swanson's Agreement* (1946), 62 T.L.R. 719. The tenancy was quarterly. Application for the necessary consent was refused, because the landlord had a "waiting list," and the refusal was accompanied or expressed by a notice to quit. Evershed, J. (as he then was), while holding that for other reasons the tenancy had become a statutory one long ago, said "that refusal was unreasonable because the landlord was out to obtain an advantage which offered itself merely because the tenant was moving."

Then *Lee* v. *K. Carter, Ltd.* (1948), 92 SOL. J. 586 (C.A.), distinguished this decision because the tenants, though one of their directors occupied the flat concerned and was the proposed assignee, were a limited company and thus not entitled to any protection, and the assignment would thus lead to the creation of new rights.

But in *Swanson* v. *Forton* [1949] 1 Ch. 143; 92 SOL. J. 731 (C.A.), when consent was applied for only some twelve days before the expiration of the term, the tenant having left already, it was held that refusal was not unreasonable because the tenant sought to confer on the proposed assignee a right not given him by the contract of tenancy.

This decision has now been applied by Roxburgh, J., in *Dollar* v. *Winston, supra*, in which a licence had been applied for by a resident tenant on 16th December, 1948, the term being till 28th February, 1949. The learned judge, while not sure that he had fully appreciated the ground for the distinctions drawn in earlier cases, held that whether or not the tenant was in occupation did not matter, as he was trying to give protection he did not want, and the fact that seven weeks and not twelve days remained did not warrant a different conclusion.

It would seem that the criticisms of *Houlder Bros. & Co., Ltd.* v. *Gibbs* [1925] Ch. 575 (C.A.), voiced by Lord Dunedin and Lord Phillimore in *obiter dicta* in *Tredegar (Lord)* v. *Harwood* [1929] A.C. 72, are making their weight felt and that the covenantee's own interests are legitimately to be considered by a landlord asked to consent to an assignment. R. B.

# PRACTICAL CONVEYANCING—VI

## CONTROLLED PRICE HOUSES

### OFFENCES BY SOLICITORS

MANY solicitors are concerned about the possibility of becoming involved in offences committed by the sale of controlled price houses at excessive prices. *Johnson* v. *Youden and Others* [1950] W.N. 58; *post*, p. 115, gives an indication of the circumstances in which a solicitor may be guilty of such an offence. In that case a builder built a house under the authority of a licence granted subject to a condition limiting the price. The builder induced a purchaser to agree to pay for the house £250 in excess of the permitted price, and this sum was handed over to the builder, who then instructed a firm of solicitors, in which the three defendants were partners, to act for him in the sale. He concealed from the defendants the fact that he had received the additional sum of £250 and the first two defendants did not at any material time know of this fact. Some time later the purchaser's solicitors wrote a letter to the third defendant stating that the transaction had not been completed because the builder had committed a breach of the Building Materials and Housing Act, 1945, s. 7. This is the section which makes it an offence to sell or offer to sell a house for a greater price than that limited by a condition in the licence. The third defendant asked the builder for an explanation and was told that the sum of £250 had been placed in a deposit account and that it was to be spent on payment for work on the house when he would be able lawfully to execute it. The third defendant accepted the explanation, and, after consulting the Act of 1945, formed the opinion that the payment in question was lawful and called upon the purchaser to complete.

According to the report in the *Weekly Notes* the builder was charged with offering to sell the house for a greater price than that permitted, contrary to the Building Materials and Housing Act, 1945, s. 7 (1), and the three solicitor defendants were charged with aiding and abetting him in the commission of this offence. The builder was convicted and the questions before the Divisional Court related to the charges against the solicitor defendants. The court decided that there was no case against the two partners in the firm who did not know of the receipt of the additional sum of £250. Lord Goddard, C.J., said that before a person could be guilty of aiding and abetting he must at least know the essential matters constituting the offence. On this ground the third defendant was held to be guilty of aiding and abetting. So far as can be ascertained from the report the only act he did after learning of the receipt of the additional £250 was to call on the purchaser to complete.

If completion had taken place and the builder had been convicted of the offence of selling the house at an excessive price the solicitor would have been guilty of aiding and abetting the offence of selling the house. On the other hand it is noted that the charge against the builder was of offering to sell the house and, according to the report, the charge against the solicitors was one of aiding and abetting the same offence.

Under the Building Materials and Housing Act, 1945, s. 9 (3), for the purposes of that Act a person sells a house if he sells *or agrees to sell* any interest in the house. It does not appear from the *Weekly Notes* report whether a binding agreement to purchase had been made. If there had been, the builder could have been charged with the offence of selling the house as a result of the agreement to sell, but the third defendant did not aid or abet that offence. Presumably there was no binding agreement to sell, but the offer to sell was regarded as continuing after the third defendant knew of the additional payment. It appears that the third defendant must have been held to be guilty of aiding and abetting the *offer* to sell on these grounds.

For these reasons it is not altogether clear from the report why the solicitor was guilty of the particular offence charged against him, although a fuller report may throw more light on the matter. The case does make it clear, however, that a solicitor who knows that his client has taken an excessive price must do no act, however small, towards completion of the transaction.

### ROAD CHARGES

The comments made in the article headed "Road Construction Costs—I," *ante*, p. 24, with regard to road charges affecting controlled-price houses have given rise to a number of queries raising interesting points. For instance, correspondents have mentioned a case in which the building licence makes no reference whatever to road charges, but the local authority have later stated that the maximum selling price fixed includes road charges and that the purchaser should satisfy himself that no contingent liability for road charges has been taken into account in the purchase price. The question arises whether the vendor is bound to make up the roads according to the usual standards before selling at the controlled price. It would seem to be very desirable indeed that the local authority should specify on the building licence that the completion of the road works is one of the matters taken into account in fixing the price, but even if this has not been done there does seem to be some ground for the assertion that the road works must be carried out by the vendor. In *Modern Housing (Leicester), Ltd.* v. *Gunning* [1948] 1 All E.R. 784, it was decided that in determining the extent of the land to be sold with the house the court might look at the deposited plans on the strength of which the local authority granted the building licence, because such plans were referred to in the application for the licence. Consequently, it seems proper to look at the application in construing the licence. The common form of application for a building licence for a small dwelling contains a note stating that "the building cost and the selling price (freehold including cost of roads, sewers and other services) . . . will be fixed by the local authority." This seems to make it clear that the price fixed by the local authority includes the cost of roads. Therefore, it seems at least to be arguable

that the roads must be made up by the vendor if he is to charge the full controlled price. On the other hand, the matter is not at all clear and it would certainly be advisable that the building licence should deal expressly with the point. Further, it would be as well if local authorities specified the standard for the road works, for instance, as that required by the local authority for the taking over of the road.

Another correspondent has raised the question whether the builder vendor need undertake to maintain the roads until they are taken over by the local authority if the building licence states that the cost includes road charges. There would seem to be no ground for requiring the vendor to do this, and if he makes up the roads to the standard required he need do no more.

J. G. S.

# HERE AND THERE

## APPEAL DISMISSED

FOR the intellectual, the film critic libel case had the same sort of general appeal that, say, the Hume case had for the broad-brow and the low-brow. *The Times* paid the long-expected decision of the Lords the now quite exceptional compliment of a full two-column report and the opinions, throughout the three-month period of incubation (reckoning from hearing to delivery) were awaited with some considerable impatience. The great public is usually lavish enough in the matter of pen scratches on petitions for the reprieve of any murderer who has been competently enough written up, but it must be a long time since any litigant succeeded in arousing this practical benevolence of so wide a body of sympathisers to the extent of contributions (in hundreds of pounds and single sixpences) amounting in all to between £7,000 and £8,000 towards costs actual and prospective. Up to and including the Court of Appeal it seems that this case had cost about £4,000 all told. The long hearing in the Lords added about £2,250 to the appellant's bill and about £3,000 to that of her opponents. Hers would have been a lot higher but for the fact that her leading counsel appeared without fee and her solicitors likewise expressed their personal devotion to her cause in terms of a substantial reduction of their charges. To her and to her supporters and to those so constituted that they are disinclined to "root for" the big battalions (right or wrong) the final result will be not only a bitter disappointment, but also rather a surprise. By the end of the hearing, I am told, the best opinion among the prognosticators was that a new trial would be ordered. But, as so often happens, the prognosticators were wrong. Out of all the long battle no new law has emerged. Reduced, refined and distilled to their essential and irreducible minimum, the opinions (and they were not short) leave this residuum in the bottom of the crucible: on the evidence it was impossible to establish the existence of malice on the part of the film company in a matter (to borrow the words of Lord Porter) "so full of the possibility of divergent views and personal prejudices." In short, the clear moral of the whole business seems to be *De gustibus non est disputandum*, especially to the tune of £9,000 worth of litigation. Perhaps one may add the rider that for a commercial company more rewarding forms of publicity can be imagined than litigation, even when in the end one gets it free.

## TWO MORE APPEALS

TWO other appeals, memorable enough, each in its own sphere, attracted but little attention lately. In the Court of Appeal the lady, who touched the altitude record with £16,450 damages in a road accident case, has held every penny of her judgment. So to the satisfaction of a double win she can join the glory of a landmark. The other appeal, dealt with in three inches of newspaper column, was the dead, fallen rocket-case of a firework that only the other day blazed across the international firmament, a pyrotechnic masterpiece of litigation, clearly visible from the long walls of the Kremlin and the skyscrapers of New York, the stupendous, the inimitable, the unrepeatable Kravchenko libel case in Paris, that for an enormously long and successful run seemed to turn the Palace of Justice into a Palace of Varieties not very far removed from the mood of the late Tommy Handley. Spectators could hardly follow the proceedings without the aid of a vocabulary of vituperative Russian epithets. The fast and furious fun touched and stayed at heights not often reached in any British court—perhaps never reached save in the great Pemberton-Billing libel prosecution at the Old Bailey during the first World War. Anyhow, the 150,000 francs (all those noughts add up to little enough in post-war finance) awarded to the plaintiff at the trial has quietly and unsensationally been reduced to just one—now the Gallic equivalent of our own farthing damages. The court apparently held that the plaintiff had gained so much on the swings by the increased sales of his book attributable to the super-publicity of the trial in the world Press, that it cancelled out anything he might have lost on the roundabouts by reason of the libel. The fines of 5,000 francs imposed on the defendants stood.

## OAKHAM ASSIZES

VAST, genial G. K. Chesterton once wrote a pleasant little poem in praise of Rutland concluding with the aspiration: "I'll live and die in Rutland, if there's room." I remembered it when I heard with pleasure that Rutland had mustered a cause list for the Lord Chief Justice to hear and determine at the Assizes: three criminal cases and a civil case. (Even Rutland, it seems, has its miniature crime wave or wavelet.) So the trumpets blew again in quiet Oakham and the judge passed into the Castle Hall where the wall is hung with horseshoes great and small (some for a normal-sized horse and others beaten out of seven-foot-long strips of metal), the immemorial toll paid by Kings and Queens and princes and peers to the Lord of the Manor on passing through the town. Lord Goddard, by virtue of his rank, was liable to the toll and duly acknowledged it. They say it is half a century since a Lord Chief Justice passed that way on the Circuit. Time has brought few changes to the old Hall, but one of them, appreciatively regarded by the police, is a brand new dock. It is nearly three years since there was need to hold the Assizes here and the last Assize before that was twenty-two years earlier. In 1947 it was feared that, by reason of the findings of the Boundary Commission, never again would Oakham see scarlet and ermine. *The Times*, greatly daring, marked the occasion with a fine large photograph of the interior of the court with the judge upon the Bench during the reading of the Commission. Having regard to the strict ban on camera work in court, I have always wondered how any photographer managed to escape the keen eye of so strict an upholder of all conventions as Croom-Johnson, J., who was judge on that occasion. It was, however, a very beautiful picture and the risk (if one may say so at this distance of time) was well worth it.

RICHARD ROE.

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Mr. R. P. BURTON, deputy town clerk of Eastleigh, Hampshire, has been appointed deputy town clerk of Sutton Coldfield.

Mr. Roy Romain, solicitor, of London, competing in the Empire Games at Auckland, was placed second in the final of the men's 220 yards breast-stroke.

Mr. Alec Charles Horner, solicitor, of Leeds, was married on 2nd February to Miss Mavis Walker, of Leeds.

Capt. R. H. Langham, clerk to the Reading borough magistrates, has taken over the office of honorary secretary of the Reading Amateur Regatta.

# CORRESPONDENCE

*[The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL*]*

### "Including Out"

Sir,—We are acting for a purchaser and made the usual enquiries of the County Council concerned and in reply to No. 4 (*b*) of the Form of Enquiry we received the following answer:—

"The property is 'included' in proposals approved by the Council for inclusion in the Development Plan in the sense that it is 'excluded' from a development area recently approved for inclusion in such Plan."

We refrain from comment.

BAILEY & COGGER.

Tonbridge.

### London Law Society

Sir,—It is unfortunate that your leading article on the formation of a London Law Society has not been followed by further discussion in your columns. I am of the opinion that the case for the immediate establishment of such a society is overwhelming, and that London solicitors suffer every day that it is delayed.

I set out below ten reasons which convince me that the society is needed. If any of your readers disagree I hope they will say so. In my view its formation is only delayed by apathy and a lack of understanding of the advantages of the society.

The case for the society is as follows:—

(1) The Law Society cannot adequately represent the views of London solicitors. It is primarily a national body and is too large and unrepresentative.

(2) London solicitors are one-quarter of all solicitors in England and Wales and yet they alone are not consulted when major items of policy arise. They have had nothing to do with the framing of the legal aid and advice scheme or the revision of the constitution of The Law Society.

(3) A London society would express the views of London solicitors to the Council of The Law Society on all matters relating to their professional work, e.g., conveyancing charges, registered land costs, agreeing costs. It would consider matters referred to it by the Council and also make recommendations to the Council on matters raised by its members.

(4) Special committees of the society would function for specific purposes and the views of solicitors on particular branches of the profession would, when necessary, be ascertained by meeting or otherwise. For instance, solicitor advocates, county court solicitors, conveyancing solicitors and company law solicitors could meet and discuss their problems, or could arrange for specialist courses.

(5) It would presumably have some of its members on the Council and take over the Metropolitan Appointments Committee.

(6) It would provide a representative area committee to administer the legal aid and advice scheme and would carefully watch and criticise the working of the Act.

(7) It would consider new problems affecting solicitors, e.g., those under the Town and Country Planning Act, and help The Law Society when dealing with Government departments, Ministers and other bodies.

(8) It would bring together solicitors in different districts, either permanently in groups or for specific purposes.

(9) A London society would arrange social functions centrally and in districts. Solicitors could really get to know each other and a corporate feeling and sense of purpose would for the first time be developed.

(10) London solicitors at last would have some control over their own profession, be able to voice their grievances and mutually discuss their problems. Why should every other part of the country be able to do all these things and London solicitors alone be unorganised and powerless?

The meeting at which the provisional committee on the formation of the society is to report back will be held some time in April. I hope that as many solicitors as possible will attend it.

T. S. STALLABRASS.

London, S.W.1.

### Forensic Dress

Sir,—I observe that in your report of the special general meeting of The Law Society held on 27th January, it is stated that there were "overwhelming majorities" against paras. (*b*) and (*c*) of the motion standing in my name.

With regard to para. (*c*), it was not stated how many opposed the proposition, but as far as I could see the voting was fairly close and there were a large number of abstentions.

There is, I think, more support for my proposals in the provinces than there is in London, but it seems to me that there is considerable interest in the question and that, for a first discussion, the meeting on the 27th ultimo cannot be regarded as unsatisfactory.

C. JOHN WEBB.

London, W.12.

### Solicitors' Robes

Sir,—I am writing to express my agreement with "Richard Roe" in your issue of [11th February], where he deplores the too-ready rejection of the resolution placed before the recent meeting of The Law Society.

The raising of the matter of robes, however, prompts me to address to you, and possibly to your readers, a query, the correct answer to which interests me considerably, namely, what are the historical origins of the patterns of judges', barristers' and solicitors' robes as at present worn? Further, is there any literature on the subject?

MERVYN F. CLUFF.

Hull.

# BOOKS RECEIVED

**Six English Economists.** By T. F. KINLOCH, M.A., F.R.H.S. Fourth Edition. 1950. pp. vii and 107. London: Gee & Co. (Publishers), Ltd. 6s. net.

**Archbold's Criminal Pleading, Evidence and Practice.** Supplemental Service: Issue No. 1. 1st January, 1950. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

**The Juridical Review.** Vol. 61, No. 3. December, 1949. Edinburgh: W. Green & Son, Ltd.

**A Concise Guide to Solicitors' Costs.** By H. C. HARDCASTLE SANDERS, Solicitor of the Supreme Court. Second Edition. 1950. pp. viii, (with Index) 268 and (Appendix) 22. London: Butterworth & Co. (Publishers), Ltd. 30s. net.

**Encyclopædia of Planning, Compulsory Purchase and Compensation: Vol. 1, Planning.** Revision No. 2. 1st January, 1950. London: Sweet & Maxwell, Ltd.

**The General Election: List of Candidates.** First Edition. 1950. pp. 102 and (Index to Constituencies) 10. London: The Press Association, Ltd. 12s. 6d. net.

**The Rent Acts.** By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Fifth Edition. 1950. pp. l, 442 and (Index) 18. London: Stevens & Sons, Ltd. 30s. net.

**Gibson's Conveyancing.** Supplement to the Sixteenth Edition. By THE EDITORS. 1950. pp. 53. London: Law Notes Lending Library, Ltd. 7s. 6d. net.

# NOTES OF CASES

## HOUSE OF LORDS

### INVENTION OF DRUG: CLAIM TO PATENT FOR AMENDED SPECIFICATION

**May & Baker, Ltd., and Others *v.* Boots Pure Drug Co., Ltd.**

Lord Simonds, Lord Normand, Lord Morton of Henryton, Lord MacDermott and Lord Reid. 9th February, 1950

Appeal from the Court of Appeal.

Certain letters patent were granted to the appellants, May & Baker, Ltd., and Ciba, Ltd., jointly, on 24th May, 1946. On 12th September, 1946, a petition was presented by the respondents (Boots Pure Drug Co., Ltd.) for revocation of the patent. On 28th March, 1947, the patentee company applied by motion under s. 22 of the Patents and Designs Acts, 1907–46, to amend the specification of the patent and the motion was ordered to come on for hearing with the trial of the petition. The patentees informed the petitioners (Boots) that if the proposed amendments were not in substance allowed they did not propose further to contest the petition. The patentees had discovered two drugs, sulphathiazole and sulphamethylthiazole. Jenkins, J., found that the production of those drugs was a patentable invention, and that they were useful drugs. The claims of the specification were not confined to those two drugs, but included a large number of sulphathiazole derivations. By the proposed amendments the patentees sought to restrict the patent so as to claim only the manufacture of the two substances to which the specification specifically referred. The Court of Appeal, affirming Jenkins, J., held that the specification as amended would claim an invention substantially different from that claimed in its original form, and that accordingly the court had no power to allow the proposed amendments. The patentees now appealed.

The House took time for consideration.

LORD SIMONDS said that there was no hint in the original specification that the exemplary drugs sulphathiazole and sulphamethylthiazole were essentially distinguishable from any other members of the vast group within which they fell, or that they had some peculiar characteristic which gave them a therapeutic value. No one could fairly read the document without concluding that their therapeutic value was derived from a generic quality: they illustrated the invention just because they had that quality. No separate claim was made for the manufacture of those two specific drugs, or for the drugs themselves or either of them. It had been contended for the patentees "that to limit the claims of a specification to the only form of the invention specifically described in the unamended specification and therein claimed in general terms cannot be to claim a substantially different invention." But it was begging the question to say that, in every case in which the patentee had stated the nature of his invention in wide and general terms and then given an illustration of it, he could shift his ground and claim that his invention was not the general but the particular: he could do so only if they were the same inventions. That problem was to be solved by the consideration of the facts of each case, and the court was not to be precluded from inquiring whether the illustration given by the patentee was in fact an illustration of the invention which he had generally described. In his (his lordship's) opinion the proposed amendment would make the invention claimed substantially different from that claimed before amendment. Accordingly it was not permissible under the Act, and the appeal should be dismissed.

LORD NORMAND agreed that the appeal failed.

LORD MORTON, dissenting, said that the proposed amendment was, in his opinion, one by way of disclaimer, and not prohibited by the proviso to s. 22 of the Patents and Designs Acts, 1907–46. He regarded the two drugs as being the preferred embodiment of the invention described in the specification. It seemed to him that the patentees were not claiming a substantially different invention, but something which was part of the wide invention originally claimed.

LORD MACDERMOTT agreed that the appeal should be dismissed.

LORD REID said that he thought that the proposed amendment was competent, but that it did not necessarily follow that the appeal must succeed. He was unable to agree that the appeal should be dismissed on the grounds which their lordships had stated. Appeal dismissed.

APPEARANCES: *Drewe*, K.C., *Kenneth Johnston* and *Eric Walker* (*Bird & Bird*); *Heald*, K.C., *J. P. Graham* and *Everington* (*Seaton Taylor & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF APPEAL

### CONTRACT: IMPLIED TERM

**Sethia (1944), Ltd. *v.* Partabmull Rameshwar**

Tucker, Singleton and Jenkins, L.JJ. 5th December, 1949

Appeal from Lord Goddard, C.J.

Dealers in jute carrying on business in Calcutta entered into four contracts in July and September, 1947, for the supply to buyers in England of 3,500 bales of jute to be shipped to Italy. Under a licensing system in force in India the Indian Government in February, 1947, had notified the jute trade that regulations were to be made fixing a quota for jute shipments. The quotas were fixed on the shipments made in a basic year selected by the shipper. As the sellers had selected 1946, in which year they had made no shipment of jute to Italy, they were unable, despite applications, to obtain a quota for that country and were unable, consequently, to carry out their contracts. The buyers claimed damages for breach of contract. The committee of the London Jute Association, on appeal from four arbitrators, awarded the buyers £14,273 damages. Lord Goddard, C.J., affirmed the award of the committee. The sellers on this appeal contended that, in order to give business efficacy to the contracts which were made at a time when, to the knowledge of both parties, a licensing system regulating the jute trade was in force, there must be implied with them a term absolving the sellers from liability if, having exercised all reasonable diligence, they were unable to obtain a licence to ship. *Re Anglo-Russian Merchant Traders, Ltd. and John Batt & Co. (London)* [1917] 2 K.B. 679 was relied on.

TUCKER, L.J., said that the only question of law raised by the appeal was whether, in order to give business efficacy to the contracts, it was necessary to imply into them the term for which the sellers contended. It was important to bear in mind that, for all any potential buyer might know, the sellers had selected a basic year in which they had shipped jute to Italy and had accordingly been allotted a quota for Italy. In fact they had not. The circumstances which surrounded these contracts were clearly distinguishable from the position in *Re Anglo-Russian Merchant Traders, Ltd. and John Batt & Co. (London)*, *supra*. No such implied term could be read into the contracts. The appeal must be dismissed.

SINGLETON and JENKINS, L.JJ., agreed. Appeal dismissed. Leave to appeal to House of Lords.

APPEARANCES: *Sir William McNair*, K.C., *J. G. Hobson* and *Chaudhuri* (*Linklaters & Paines*); *Scott Cairns*, K.C., and *B. J. M. MacKenna* (*Stuart Hunt & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### INNKEEPER: THEFT OF GUEST'S CAR FROM HOTEL FORECOURT

**Gee, Walker & Slater, Ltd. *v.* Friary Hotel (Derby), Ltd.**

Tucker, Singleton and Jenkins, L.JJ. 13th December, 1949

Appeal from Stable, J.

The plaintiffs' servant left their car in the forecourt of the defendants' hotel while he was dining there. The car was left locked and without its ignition key, and the intention was

to leave it there all night, as had been done on ten occasions in the preceding three months. At 8.15 p.m. the car was found to have been stolen. The plaintiffs' action for its value against the defendants, the owners of the hotel, was dismissed by Stable, J., on the ground that it was negligent of their servant to leave it there for the night. They now appealed. The defendants conceded that the car had been received by them as part of the guests' goods.

TUCKER, L.J., said that the law on the subject of an innkeeper's liability had long been established. In *Shacklock* v. *Ethorpe, Ltd.* (1939), 83 SOL. J. 670; 55 T.L.R. 895, Lord Macmillan had reviewed the cases and referred with approval to a passage in the judgment of Lord Esher, M.R., in *Robins & Co.* v. *Gray* [1895] 2 Q.B. 501, at p. 503, and also to the judgment of Erle, J., in *Cahill* v. *Wright* (1856), 6 F. & B. 891, at p. 900. It was clear that liability was on the innkeeper and that the burden lay on him of showing that the loss had occurred by reason of the negligence of the guests. The defendants had not discharged that burden. There was no evidence that the existence of a garage had ever been brought to the notice of the plaintiffs' servant. Nor had he left the car in the forecourt all night, for it was stolen while it was lawfully parked there between 7.15 and 8.15 p.m.

SINGLETON and JENKINS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *C. N. Shawcross*, K.C., and *Bickford-Smith* (*A. E. Wyeth & Co.*); *Elwes* (*Maude & Tunnicliffe*, for *Taylor, Simpson & Mosley*, Derby).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## RENT RESTRICTION: NIECE "MEMBER" OF TENANT'S FAMILY

### Jones *v.* Whitehill

Evershed, M.R., Cohen and Asquith, L.JJ.
15th December, 1949

Appeal from Birmingham County Court.

The defendant was the niece of the wife of the tenant of a house within the Rent Restriction Acts. Out of love and kindness she went to live with the couple in order to look after them in their poor state of health. The aunt died in July, 1948, and the tenant, her husband, some five months later, being then a statutory tenant. After his death the defendant claimed to be entitled to remain on in the house as tenant under the Rent, etc., Act, 1920. The landlord brought this action for possession. The county court judge made an order, and the defendant appealed. By s. 12 (1) (*g*) of the Act of 1920 (as amended): "... the expression 'tenant' includes ... where a tenant leaves no widow or is a woman such member of the tenant's family so residing [i.e., at the time of his death] as may be decided in default of agreement by the county court."

EVERSHED, M.R., said that, in answering the question whether the defendant could fairly and properly be described as a member of the tenant's family, the court was much assisted by *Brock* v. *Wollams* [1949] W.N. 148; 93 SOL. J. 319, where Bucknill, L.J., cited Wright, J., in *Price* v. *Gould* (1930), 143 L.T. 333. In *Brock* v. *Wollams* (*supra*), Cohen, L.J., rejected the suggestion that he was faced with the two alternatives, namely, consanguinity or anybody in the household. Another view had appealed to him, namely, that the question whether a particular individual was a member of the tenant's family should be answered according to the ordinary sense of the word. He (Evershed, M.R.) took that test as having been adopted by the Court of Appeal and as applicable here. It was alleged that, if the defendant were taken to be a member of the deceased tenant's family, that involved laying down that nephews and nieces of the wife of a tenant were members of his family. He was not suggesting that this would necessarily be so. The defendant, a niece of the tenant's wife, assumed out of natural love and affection the duties and offices peculiarly attributable to members of a family in that she went to live with her uncle and aunt to look after them in their declining years. If it had been asked in ordinary conversation whether the defendant was a member of the tenant's family, an affirmative answer would have been given. This defendant should be regarded on the facts as within the protection of s. 12 (1) (*g*).

COHEN and ASQUITH, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Heron* (*Underwood & Co.*, for *J. Foley Eggington & Co.*, Sutton Coldfield); *Blennerhassett* (*Sharpe, Pritchard & Co.*, for *Bailey, Cox, Bosworth & Co.*, Birmingham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## TOWING OF DISABLED SHIP: TOWAGE OR SALVAGE?

### "The Troilus"

Bucknill, Somervell and Denning, L.JJ. 16th December, 1949

Appeal from Lord Merriman, P.

The steamship "Troilus" lost her propeller in the Arabian Sea, and was towed into Aden. The motor vessel "Glenogle" then towed her back to England, as it was found impracticable to repair her elsewhere. Lord Merriman, P., held that that towing was a salvage service, and awarded the owners, master and crew of "The Glenogle" £22,000, which he apportioned between them. The owners of cargo on board "The Troilus" appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., said that the first question was whether "The Troilus" at anchor at Aden was in such a position of safety that her removal was merely towage and not salvage. He referred to *The Glaucus* (1948), 81 Ll. L.R. 262; *The Reward* (1841), 1 Wm. Rob. 174; *The Princess Alice* (1849), 3 Wm. Rob. 138; *The Batavier* (1853), 1 Spinks E. & A. 69; and *The Kingalock* (1854), 1 Spinks E. & A. 263, and said that there was, in his opinion, a crucial difference between a ship at sea which was wholly or partly disabled and a ship lying safely at anchor where her disablement no longer was material to her safety. He thought that it could not reasonably be suggested that a ship which had lost her propeller remained in danger however securely she was at anchor, moored at buoys or tied up at a quay in a sheltered harbour. Nevertheless, in a case such as this, where the ship admittedly came into a state of danger when she lost her propeller, the burden was on her owners to show that that state had come to an end before "The Glenogle" started to tow her. On the evidence it was clear that the master of "The Troilus" regarded the services of "The Glenogle" as a continuation of the service of salvage into Aden. On the whole, he (his lordship) thought that "The Troilus" was in "danger" (within the meaning given to that word in salvage law) when "The Glenogle" started to take her in tow, and that she had come to anchor at Aden merely as a temporary measure pending the resumption of the salvage service. The second contention raised by the cargo owners was that, even if "The Troilus" was in some danger at Aden, she and her cargo were in safety after reaching Suez. His lordship referred to *The Syria* (The Shipping Gazette, 1874), the principle in which had been applied by Bateson, J., in *The Idomeneus* (1889), 22 Ll. L.R. 299, and said that it seemed to him that it would be very inconvenient and prejudicial to the salvage of property at sea and to the general interests of navigation and commerce if a salvage service were held to come to an end as soon as the salved ship, in the course of the service, was taken into a position of temporary safety.

SOMERVELL and DENNING, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Nelson*, K.C., and *Vere Hunt* (*Thos. Cooper & Co.*, for *Batesons*, Liverpool); *Naisby*, K.C., and *Hewson* (*Bentleys, Stokes & Lowless*, for *Alsop, Stevens & Co.*, Liverpool).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## BANKRUPTCY: INFANTS

### *In re* A Debtor (No. 564 of 1949); *ex parte* Commissioners of Customs and Excise *v.* The Debtor

Sir Raymond Evershed, M.R., Somervell, L.J., and Hodson, J
23rd January, 1950

Appeal from the registrar in bankruptcy of the High Court.

The debtor, an infant, carried on the business of manufacturer of cosmetics in partnership with her mother. The Commissioners for Customs and Excise obtained a judgment for unpaid purchase tax against the debtor and her mother and, when the judgment remained unsatisfied, filed a bankruptcy petition asking for a receiving order against them. Mr. Registrar Parton made a receiving order against the mother but dismissed the petition against the debtor on the ground that the debtor was an infant. The Commissioners appealed.

Sir RAYMOND EVERSHED, M.R., said that purchase tax for which an infant was accountable constituted a debt in the ordinary sense, that was a debt recoverable from her by law, in the same manner in which a claim for unpaid income tax was recoverable from an infant (*Ex parte Huxley* [1916] 1 K.B. 788). Consequently, the conditions postulated in s. 3 of the Bankruptcy Act, 1914, for the jurisdiction of the court to make receiving orders had been complied with. There was no warrant for the view that the law of bankruptcy did not apply to an infant by reason of his status of infancy. The language of s. 3 was apt to cover all debts legally enforceable against the infant, such as the liability for tax or for necessaries. There was no rule of public policy that an infant should not be made bankrupt. If a person was of an age to engage in trade, there was no reason why the law of bankruptcy should not apply to him as regards enforceable debts. There was jurisdiction in the court to refuse a receiving order in appropriate cases.

SOMERVELL, L.J., and HODSON, J., concurred. Appeal allowed.

APPEARANCES: *Hon. Denys Buckley* (*Solicitor of Customs and Excise*); *Wingate-Saul* (*Franks, Charlesly & Leighton*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

## CHANCERY DIVISION

### WILL: DESCRIPTION OF GIFT OMITTED

***In re* Turner; Carpenter *v.* Staveley**

Danckwerts, J. 11th November, 1949

Adjourned summons.

In a will made on a law stationer's form, the printed words "I give and bequeath unto" were followed by a list of eleven named nephews and nieces of the testator; after a blank space the will continued: "My gold wrist watch to go to" one of the eleven persons named before.

DANCKWERTS, J., said that the question was whether the testator made an effective special bequest of the gold watch and an effective gift of his residuary estate to the eleven named persons, or whether he had failed to dispose of his residuary estate, only the special gift being a valid disposition. On the true construction of the will, the bequest of the gold watch was an afterthought, and was clearly a special and separate bequest. The next question was whether there was an effective residuary gift in favour of the eleven named persons. There was no description of the subject-matter of the gift to those persons, and unless the subject-matter could be ascertained, the gift would be void for uncertainty. However, as the specific gift was merely by way of afterthought and stood alone, it was reasonably clear that the testator intended to give all the eleven named persons the whole of his residuary estate, except in so far as disposed of by the special gift, and that, in the absence of words of severance, they took as joint tenants.

*In re Bassett's Estate; Perkins* v. *Fladgate* (1872), 14 Eq. 54, and *In re Harrison; Turner* v. *Hellard* (1885), 30 Ch.D. 390, followed.

APPEARANCES: *Richmount* and *Spears* (*H. E. Thomas & Co.*); *J. H. Bassett* (*Philcox, Sons & Edwards*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

### COSTS: WILLS: SUMMONS FOR CONSTRUCTION: COUNSEL'S FEE

***In re* Bennett; Barclays Bank *v.* Coates**

Romer, J. 20th January, 1950

Adjourned summons.

In proceedings on an adjourned summons for the construction of certain provisions in a will an order was made that the costs of all parties as between solicitor and client be taxed and paid out of the residuary estate. The taxing master disallowed certain items on the ground that it was usual that, in the case of summonses such as that in question, the brief fee of counsel for the executors or trustees was marked lower on the brief than the brief fee of counsel for the beneficiaries. On review of the taxing master's certificate,

ROMER, J., said that it would be very regrettable if a rule were to grow up that counsel for the plaintiff executors or trustees should in these cases receive a fee lower than that of counsel for the beneficiaries. Counsel for the plaintiffs in such cases had much preliminary work to do, which called for skill and judgment and was remunerated only on a moderate scale; at the hearing such counsel owed his clients a considerable responsibility in seeing that nothing was overlooked, and was frequently asked by the court to assist in argument. The taxing master's certificate had, therefore, to be varied.

APPEARANCES: *Droop, Upjohn*, K.C., and *Hillaby* (*Horne and Birkett*); *L. K. Jahet* and *Gahan* (*Redden & Booth*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

## KING'S BENCH DIVISION

### DIVISIONAL COURT

### EXECUTION: INTERPLEADER: FORM OF CLAIM

**J. R. P. Plastics, Ltd. *v.* Gordon Rossall Plastics, Ltd. (Hexa Pen Co., Ltd., Claimants)**

Lord Goddard, C.J., Lynskey and Sellers, JJ.
13th January, 1950

Appeal from Master Moseley.

The claimant company gave written notice to the Sheriff of Kent that they claimed certain property on premises shared by them with a company on whom execution was about to be levied at the instance of judgment creditors. The claim was in the form of a letter written on writing paper headed with the claimants' name, but signed in error by a director of the judgment debtor company who was also a director of the claimant company. The sheriff took out an interpleader summons directed to the claimants and the execution creditors, and affidavits were filed by the director by way of explanation of his mistake in signing the notice as he did, and asserting that the property in question had been sold by the defendants to the claimant company. The master ordered that "the claimants be barred and that no action be brought against the sheriff," and the claimants appealed. By R.S.C., Ord. 57, r. 10: "If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the court or a judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant, and persons claiming under him . . ." By r. 16 (1): ". . . a claim . . . shall be in writing with the address of the claimant thereon . . ."

LORD GODDARD, C.J., said that, although the director had in error signed the letter as director of the judgment debtor company, it was a document which gave the name and address of the claimants. Rule 16 (1) said nothing about signature, and it would have been a perfectly good claim if it had been simply in the form: Take notice that the claimant company [giving their address] claim the goods. The object of the claim was simply to give notice to the sheriff that somebody disputed his right to seize certain goods at the instance of the execution creditor. Although the affidavits of the director were sketchy and might give rise to a suspicion that the claim was not genuine, there was at least a claim. Yet the master had barred it and in addition barred the claimants from bringing any action. In any event, on the wording of r. 10, the effect of the master's order, since the sheriff was the applicant, could only be to bar the bringing of an action against the sheriff. But the master had not

directed what was to happen between the claimants and the execution creditors, and it was complained that the master's order purported to dispose of the matter altogether without direction as to future proceedings. The court would set aside the order and direct an issue to be tried in which the claimants should be the plaintiffs and the execution creditors the defendants. A sensible course would be for the parties to agree that the matter should be heard in a summary way by another master.

LYNSKEY, J., agreeing, said that it was only under r. 10 that jurisdiction was conferred on a master or judge before the issue was directed to be tried to make an order barring the claim and preventing proceedings against the sheriff. Unless the facts of a particular case could be brought within the ambit of r. 10 the master or judge had no power to make such an order. In this case the claimant did appear and stated the nature of his claim. However nebulous that claim might be, he was not in default in carrying out any order made by the master, and therefore the master had no power to make the order which he made.

SELLERS, J., agreed. Appeal allowed.

APPEARANCES: *Boreham* (*Temple & Co.*); *Asher* (*Sanders and Co.*); *Harold Brown* (*Palmer, Bull & Mant*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

## SOLICITORS: SALE OF HOUSE ABOVE PERMITTED PRICE

### Johnson *v.* Youden and Others

Lord Goddard, C.J., Humphreys and Lynskey, JJ.
19th January, 1950

Case stated by Dover justices.

A builder built a house under the authority of a licence granted subject to a condition limiting the price for which the house might be sold to £1,025. He induced a purchaser to agree to pay for the house in advance £250 in excess of the price permitted, and then instructed a firm of solicitors, in which the three defendants were partners, to act for him in the sale. He concealed the additional £250 from the defendants, and the first two of them did not know of it at any material time. The purchaser's solicitors, however, wrote to the third defendant that they had not proceeded to completion because the builder had contravened s. 7 of the Building Materials and Housing Act, 1945. In answer to the third defendant's inquiry, the builder stated that he had placed the £250 in question in a separate deposit account and that it was to be spent on payment for work on the house on the purchaser's behalf, as and when he would be able lawfully to execute it in the future. The third defendant accepted that explanation, considered the Act of 1945, formed the opinion that the payment of £250 was lawful, and called on the purchaser to complete. The builder was charged on information with offering to sell the house for a greater price than that permitted, contrary to s. 7 (1) of the Act of 1945, and informations were preferred against the three defendants charging them with aiding and abetting him to commit that offence. The builder was convicted, but the justices dismissed the informations against the defendants as they were of opinion that *mens rea* was a constituent of the offence of aiding and abetting an offence under s. 7 (1), whereas, they found, the third defendant had honestly believed the explanation given to him regarding the £250. The prosecutor appealed.

LORD GODDARD, C.J., said that, before a person could be convicted of aiding and abetting an offence, he must at least know the essential matters constituting that offence. The first two defendants did not know about the extra £250, and it followed that they could not be guilty of aiding and abetting the commission of the offence by the builder. If, however, a person knew the essential facts constituting an offence, it was no defence for him, on a charge of aiding and abetting another to commit that offence, to say that he did not know that those facts constituted an offence. If the third defendant had read the Act of 1945 more carefully, he would have observed that the kind of transaction which the builder said had taken place between himself and the purchaser was prohibited by s. 7 (5). The case must be remitted to the justices with an intimation that an offence had been committed by the third defendant.

HUMPHREYS and LYNSKEY, JJ., agreed. Appeal allowed.

APPEARANCES: *Paget*, K.C., and *Edgar Bradley* (*Wilkinson, Howlett & Moorhouse*); *Bassett* (*W. C. Crocker*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## RECOVERY OF INCOME TAX ERRONEOUSLY DEDUCTED FROM ROYALTIES

### Gwyther *v.* Boslymon Quarries, Ltd.

Roxburgh, J. (as additional judge). 20th January, 1950

Action.

In 1942 the plaintiff, owner of a farm, let part of it to the defendants for two years, with a right to work and get all stone, sand and gravel underlying the land or any part, at a yearly rent of £10 and royalties of 1s. 6d. per cubic yard of sand and gravel, and 1s. per cubic yard of stone, payable half-yearly, such rent to merge in the royalties. The defendants worked the sand and gravel as material for concrete construction on an aerodrome, but the stone was not worked. In April, 1943, they paid royalties by a "credit note" for £558 less £279 for income tax at 10s. in the £. A cheque for £279 was enclosed, and a certificate of deduction of tax which the plaintiff accepted. Subsequent payments of royalties were made in the same manner, with certificates. The total amount of tax deducted during the term was £1,883, paid to the Inland Revenue Commissioners. In 1945 the plaintiff's solicitors wrote to the defendants contending that the deduction of tax was unlawful. The defendants' reply was that they were bound to deduct and pay it. After the decision of the House of Lords in *Russell* v. *Scott* [1948] 2 A.C. 422, holding on similar facts that tax under r. 3 of No. III of Sched. A to the Income Tax Act, 1918, was not properly chargeable, the plaintiff commenced this action to recover the tax deducted. (*Cur. adv. vult.*)

ROXBURGH, J., after stating the facts, said that the effect of the decision in *Russell* v. *Scott* was that the produce of sand and gravel pits, like the produce of the soil, was an element in the annual value of the land to be taken into account under Sched. A, No. 1, but not otherwise. In that case, however, there was no actual letting of the land. The Sched. A assessment of the farm took no account of a possible war-time profit in connection with the building of aerodromes. The first defence was that the jurisdiction of the court was excluded by r. 22 of the General Rules, but that only applied to disputes as to the amount of any deduction (*Duke of Fife's Trustees* v. *Wimpey* [1943] S.C. 377). It was next said that the deductions were authorised by the Finance Act, 1934, s. 21 (1) (*b*), but here the rent was merged in the royalties, and the section was only applicable to a fixed rent. Other defences were based on s. 15 or s. 17of the Finance Act, 1940. Section 15 might apply to the case, but it was of no use to the defendants, as the rules were not applicable, and s. 17 did not apply at all. The final defence was one of estoppel, and here a distinction must be drawn between the deduction of £279, the only one accounted for to the revenue before the plaintiff objected to the deductions, and the other deductions. In this first case the plaintiff's solicitors had asked for a certificate of deduction of tax, and thereby showed an intention not to dispute the deduction. The defendants acted on that indication, and so the detriment was clear. The plaintiff did not afterwards ask for certificates of deduction, and when he objected the defendants took no notice of his objections. Therefore, there was no estoppel except as regards the first deduction of £279. The defences otherwise failed, and the plaintiff was entitled to judgment for £1,604.

APPEARANCES: *G. G. Honeyman* (*L. Bingham & Co.*, for *Lewis, Morgan, Browne & Haslam*, Cardiff); *Christopher Shawcross*, K.C., and *Bickford Smith* (*Reynolds & Co.*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

## PROBATE, DIVORCE AND ADMIRALTY

### DIVORCE IN SOUTH AFRICA: DAMAGES IN ENGLAND

**Jacobs *v.* Jacobs and Ceen**
**Ceen *v.* Jacobs**

Pilcher, J. 14th December, 1949

Issue directed to be tried.

A husband had in South Africa obtained a decree of divorce against his wife on the ground of her adultery in England with the co-respondent, plaintiff in the issue. Since the divorce proceedings the wife had married the co-respondent, who was at the time of the divorce proceedings resident and domiciled in England. Steyn, J., of the Supreme Court of South Africa, ordered the co-respondent to pay the costs of the South African proceedings. In April, 1949, the husband filed a petition in this country for the court to condemn the co-respondent in damages in respect of his adultery. The prayer of the petition was limited to damages and the costs of the petition for damages. The prayer in the South African proceedings had contained no claim for damages. The view of South African counsel was that the husband could not claim damages against the co-respondent in the South African courts. The co-respondent entered an appearance under protest to the petition for damages, and after the dissolution of the marriage it was ordered that the issue should be tried whether the High Court in England had jurisdiction in such circumstances to hear a petition for damages.

PILCHER, J., said that it had been contended by the co-respondent that the court had no jurisdiction to entertain a claim for damages *simpliciter* against a co-respondent resident in this country unless the husband were domiciled here. The husband had contended that, while domicile was a prerequisite for divorce, and residence for judicial separation, a claim for damages was a claim for a tort which was not necessarily ancillary to any other claim for relief, and that the court had jurisdiction if the adultery had been committed in this country and if the co-respondent were resident here. There were observations in *Phillips* v. *Batho* [1913] 3 K.B. 25, and *Harris* v. *Taylor* [1915] 2 K.B. 580, which would appear to support the co-respondent's contention; but they were *obiter*. It was clear from *Kent* v. *Atkinson* [1923] P. 142 that a petition for damages was quite independent of, and was not ancillary to, a petition for divorce, and there was no suggestion in the report of *Bell* v. *Bell* (1932), *The Times*, 10th June, that it was not competent for a husband domiciled abroad to make a claim for damages in the High Court here. In his (his lordship's) view, where a person was merely making a claim for damages, the same principles were applicable as in an action of criminal conversation before 1857, and it was not necessary for him to show that he was domiciled in this country before the court could have jurisdiction to hear his claim for damages. Judgment for the husband, defendant in the issue.

APPEARANCES: *Marnham* (*Moreton Phillips & Son*); *Loudoun* (*Crossman, Block & Co.*, for *Schaeffer & Schaeffer*, Cape Town, South Africa).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF CRIMINAL APPEAL

### INDICTMENT AGAINST MORE THAN ONE PERSON: SENTENCING PROCEDURE

**R. *v.* Payne**

Lord Goddard, C.J., Hilbery and Cassels, JJ.
12th December, 1949

Application for leave to appeal against sentence.

The applicant, Robert Anthony Payne, pleaded guilty at Essex Quarter Sessions to a charge of housebreaking. He was indicted with two other young men who, however, were older than he. He received a sentence of two years' imprisonment. The judge before whom the matter came in Chambers gave him leave to appeal against sentence because, though he was the youngest of the three, the other two men were sentenced to only fifteen months' and twelve months' imprisonment respectively.

LORD GODDARD, C.J., giving the following judgment of the court, said that the sentence had come to be given through a practice of Essex Quarter Sessions which the court did not hesitate to say ought to be changed. The three men were indicted together. Because the appellant pleaded guilty, whereas the other two pleaded not guilty, he was dealt with at once in the first court, where the chairman, having heard a statement by counsel for the prosecution, passed sentence upon him. The other two prisoners were sent to be tried in the second court sitting the next day under another chairman. That court, having heard all the facts, proceeded to pass sentences in one case of fifteen months' and in the other of twelve months' imprisonment. Therefore the prisoner who had pleaded guilty and was in fact the youngest received two years' imprisonment from one court while the other two received lighter sentences from another. The clerk of the peace had informed the court that it was a custom at Essex Quarter Sessions for all pleas to be taken on the first day and for all pleas of guilty to be dealt with, as that procedure enabled the work of the courts to be arranged. If a prisoner was not represented the taking of the plea on the first day had the advantage of enabling the court to arrange its work, and if he wished to apply for a dock brief or for a defence certificate there was an adequate number of counsel present from whom to choose, which was not so on any subsequent day. It might be a very convenient course to sentence on the first day prisoners who pleaded guilty, but that ought not to apply where three prisoners were indicted together in one indictment and one pleaded guilty and the other two pleaded not guilty. In such a case the proper course was to postpone sentence on the prisoner who had pleaded guilty until the other two had been tried. Then that prisoner should be brought up before the court in which the other two had been tried, and all three should be dealt with together, for by that time the court would be in possession of the facts relating to all three and would be able to assess properly their relative degrees of guilt. The appellant had received a heavier sentence than the other two prisoners because he had been tried in a different court on a different day. That was a most inconvenient practice and ought to cease. Quarter sessions should discontinue a practice which would naturally leave a sense of grievance in the minds of prisoners. What had been stated above would not, however, apply in the exceptional case where a prisoner pleaded guilty who was going to be called as a witness. He would be sentenced there and then, so that he might not be under the suspicion that his evidence was coloured by the fact that he hoped to get a lighter sentence because of it. Appeal allowed. Sentence reduced to fifteen months.

APPEARANCES: None.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

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In our report of *Jones* v. *Herxheimer*, *ante*, p. 97, the appearances should read as follows: "*John Lawrence* (*Hardman, Phillips & Mann*); *Bibby-Trevor* (*E. E. Pugh & Co.*).

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The Lord Chancellor has appointed Mr. NEVILLE GRANGER HERFORD ATKINSON, Registrar of the Salford and Oldham County Courts and District Registrar in the District Registry of the High Court of Justice in Oldham, to be in addition the Registrar of Warrington County Court, and released him from the Registrarship and District Registrarship of the Oldham County Court and District Registry.

The Lord Chancellor has appointed Mr. JOHN PURCELL PEACOCK, Registrar of the Stockport, Ashton under Lyne and Stalybridge, Glossop and Hyde County Courts and District Registrar in the Stockport District Registry of the High Court of Justice, to be in addition the Registrar of Oldham County Court and District Registrar in the District Registry of the High Court of Justice in Oldham as from the 6th February, 1950.

# SURVEY OF THE WEEK

## STATUTORY INSTRUMENTS

**Bath**-Cheltenham-Evesham-Coventry-Leicester-Lincoln Trunk Road (Coventry Road, Sharnford) Order, 1950. (S.I. 1950 No. 176.)

**Bedding** (Manufacture and Supply) Order, 1950. (S.I. 1950 No. 162.)

**Chocolate,** Sugar Confectionery and Cocoa Products (Amendment) Order, 1950. (S.I. 1950 No. 190.)

**Control of Paper** (Economy) (Amendment) Order, 1950. (S.I. 1950 No. 173.)

**Control of Rams** (Amendment) Regulations, 1950. (S.I. 1950 No. 168.)

**Defence** Regulations (No. 1) Order, 1950. (S.I. 1950 No. 180.)

Defence Regulations (No. 2) Order, 1950. (S.I. 1950 No. 181.)

Defence Regulations (No. 3) Order, 1950. (S.I. 1950 No. 182.)

This order revokes, *inter alia*, Defence Regulation 48A dealing with the jurisdiction of Naval courts in certain matters, and 45E dealing with the control of agreement for the use or hire of or carriage of goods in ships.

Defence Regulations (No. 4) Order, 1950. (S.I. 1950 No. 183.)

This order revokes Defence Regulation 22 (Billeting) and 42C (Closing of undesirable premises).

**East African Naval Force** Order, 1950. (S.I. 1950 No. 179.)

**Food and Drugs** (Whalemeat) (Amendment) Regulations, 1950. (S.I. 1950 No. 189.)

**Gas** (Conversion Date) (No. 13) Order, 1950. (S.I. 1950 No. 172.)

**Import Duties** (Drawback) (No. 1) Order, 1950. (S.I. 1950 No. 169.)

**Knitted Goods** (Manufacture and Supply) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 151.)

**Long Vacation** Order, 1950. (S.I. 1950 No. 178.)

This order provides that the Long Vacation in future shall begin on the 1st August and end on the 30th September.

**Miscellaneous Goods** (Maximum Prices) (Amendment No. 8) Order, 1950. (S.I. 1950 No. 163.)

**National Health Service** (Designation of Teaching Hospitals—King's College Hospital) Order, 1950. (S.I. 1950 No. 161.)

**Nurses** (General Nursing Council Election Scheme) Rules, Approval Instrument, 1950. (S.I. 1950 No. 166.)

**Paper** (Prices) Order, 1950. (S.I. 1950 No. 144.)

**Purchase Tax** (No. 3) Order, 1950. (S.I. 1950 No. 164.)

**Quarries** (Opencast Coal) Order, 1950. (S.I. 1950 No. 167.)

**Refuse Trailers** (Termination of Excise Relief) Order, 1950. (S.I. 1950 No. 184.)

**River Ouse** (Yorks) Catchment Board (Transfer of Powers of the Holbeck Internal Drainage Board) Order, 1949. (S.I. 1950 No. 185.)

River Ouse (Yorks) Catchment Board (Transfer of Powers of the Holbeck Internal Drainage Board) (Appointed Day) Order, 1950. (S.I. 1950 No. 186.)

**Safeguarding of Industries** (Exemption) (No. 2) Order, 1950. (S.I. 1950 No. 170.)

*Draft* **School Meals Premises** (Reimbursement of Minister of Works) (Scotland) Regulations, 1950.

**Stopping up of Highways** (Cheshire) (No. 1) Order, 1950. (S.I. 1950 No. 175.)

**Town and Country Planning** (New Towns Special Development) Order, 1950. (S.I. 1950 No. 152.)

This order, which applies to any area designated as the site of a new town, grants permission for the development of the area in accordance with proposals submitted to the Minister by a development corporation, such development to be carried out either by the corporation itself or by a person to whom the corporation has disposed of the land.

**Utility Apparel** (Industrial Overalls and Merchant Navy Uniforms) (Manufacture and Supply) Order, 1950. (S.I. 1950 No. 143.)

Utility Apparel (Maximum Prices and Charges) Order, 1949. (S.I. 1950 No. 160.)

**Wild Birds** Protection (South Shields) Order, 1950. (S.I. 1950 No. 171.)

# NOTES AND NEWS

### Honours and Appointments

The Lord Chancellor has appointed Mr. DOUGLAS HAROLD NIELD, Registrar of the Birkenhead and Chester County Courts, and District Registrar in the District Registries of the High Court of Justice in Birkenhead and Chester, to be in addition the Registrar of Runcorn County Court as from the 6th February, 1950.

It has been announced by Birmingham University that on 5th May the honorary degree of Doctor of Laws will be conferred on Mr. C. D. MEDLEY, solicitor, of London, chairman of the trustees of the Barber Institute of Fine Arts at the university.

Mr. DEWI KING-DAVIES, M.A., has been appointed solicitor and clerk of the Porthcawl Urban District Council.

### Miscellaneous

The University of London announces that a lecture on "Defamation" will be given at King's College, Strand, W.C.2, by Professor E. C. S. Wade, M.A., LL.D., Downing Professor of Law, University of Cambridge, at 5.30 p.m. on Wednesday, 15th March, 1950. The chair will be taken by Professor H. Potter, LL.D., Ph.D., Professor of English Law in the University of London. The lecture is addressed to students of the university and to others interested in the subject. Admission is free, without ticket.

### DOUBLE TAXATION RELIEF

It has been agreed by His Majesty's Government and the Government of Israel that the double taxation arrangements in force between the United Kingdom and Palestine immediately before the termination of the Mandate shall be regarded as continuing in force between the two Governments. The text of the agreement will be published shortly.

### THE SOLICITORS ACTS, 1932 TO 1934

On the 2nd December, 1949, an Order was made by the Disciplinary Committee constituted under the Solicitors Act, 1932, that there be imposed upon NOEL BERRIDGE, of No. 13 Old Square, Lincoln's Inn in the County of London, a penalty of £250 to be forfeit to His Majesty and that he do pay to the complainant his costs of and incidental to the application and inquiry.

Upon the application of the said Noel Berridge the Committee directed that the filing of the Findings and Order with the Registrar of Solicitors be suspended during the period allowed for an appeal and in the event of an appeal being lodged, until the hearing and determination of such appeal.

The said Noel Berridge appealed from the said Order and the Divisional Court (King's Bench Division) on the 24th January, 1950, ordered that the appeal be dismissed with costs to be paid by the said Noel Berridge to the complainant or his solicitors.

### Wills and Bequests

Mr. H. Boocock, solicitor, of Halfax, left £74,213, with net personalty £59,230.

Mr. E. G. Bretherton, solicitor, of Tunbridge Wells, left £39,845.

Sir Douglas T. Garrett, solicitor, of London, E.C.3, left £62,337.

Mr. H. L. Stuart, solicitor, of London, W.C.1, left £19,664.

# SOCIETIES

## THE LAW ASSOCIATION

### NEW MEMBERS—NEW GRANTS

Fifty names came before the directors of the Law Association on 6th February, 1950, for election to the membership list, forty-eight of them new applicants, one an annual subscriber

seeking life membership, and one a past member rejoining after a lapse of time. All were admitted to the list, and the milestone of the thousandth member has been left behind, the total reaching 1,023 on that date. As this paragraph goes to press, further applications in response to the annual appeal launched in December are still being received, and the secretary is hoping to have a substantial supplementary list to place before the directors on 6th March. She still has some spare copies of the appeal letter, with applications and covenant forms for those who have mislaid their original copies, or who, having used their own forms, could appoint themselves the Association's recruiting agents among their legal friends practising under London certificates. The Association's address is 25 Queensmere Road, Wimbledon Park, S.W.19. The next milestone is the eleven hundredth member.

But the extension of the membership list is a means only to the end in view, the giving of help and friendship, a human interest and financial means to the unfortunate among London solicitors who, perhaps for reasons of health or infirmity, cannot continue in practice, or to their dependent relatives if, through no fault of their own, they are left ill-provided for in old age. To the younger widow, also, with children to educate, funds may be available. To such a one a grant of £78 was recently made with a supplementary maintenance grant in respect of her younger daughter, a scholarship schoolgirl nearing her fourteenth birthday. For the elderly daughter of another solicitor, an annual grant of £65 was renewed, with the gift of a new gas fire to be fitted at the Association's cost in her one room. For a solicitor's widow, just eighty years of age, who is at present being maintained in a hospital, a small grant of £5 was made to supplement the pocket money left her from the old age pension, and the secretary is visiting her every six or seven weeks. These cases are typical of the work for which the Association seeks support.

THE UNITED LAW SOCIETY announces a joint meeting with the Gray's Inn Debating Society in Gray's Inn Common Room, Gray's Inn, W.C.1, on Friday, 24th February, at 8 p.m. Debate: "That gentlemen are not wanted in the modern world." On Monday, 27th February, 1950, at 7.15 p.m., the debate will be: "That this House is of opinion that persons convicted of crime should be sentenced by medical practitioners instead of judges and magistrates."

The motion for debate on Monday, 6th February, was: "That excessive eating is worse than excessive drinking." It was proposed by Mr. T. A. Holford, who invoked quotations from Milton, Hezekiel and Bishop Still to condemn gluttony, and held out Dr. Johnson as a prime example of an evil eater. Mr. W. S. Holliday, who opposed the motion, said the law was on his side. It took notice of and controlled only excessive drinking, and decided cases showed that alcohol was often the cause of appalling criminal acts. Other speakers were D. N. Keating, A. J. Pratt, P. J. Fitzgerald, J. R. Bracewell, Miss B. H. Hancock, O. T. Hill, T. P. Burton, Miss V. J. Brown, M. L. Oatham, J. H. Jones, L. J. Cullen, Miss G. C. Hartley, E. A. A. Shadrach, J. R. Wheeler, C. H. Winnett, F. H. Butcher and Mrs. T. A. Holford. The motion was lost by 12 votes to 7.

Arrangements have been made to celebrate the 118th anniversary of the foundation of the UNITED LAW CLERKS' SOCIETY with a dinner at the Connaught Rooms, Great Queen Street, London, W.C.2, on Monday, the 13th March next. The Rt. Hon. Lord Morton of Henryton will occupy the chair and will be accompanied by Lady Morton.

At the monthly meeting of the board of directors of the SOLICITORS BENEVOLENT ASSOCIATION held on the 1st February, 1950, forty-one solicitors were admitted to membership of the Association, bringing the total membership up to 7,514. A sum of £1,601 3s. was distributed in relief to twenty-two beneficiaries; of this sum £1,541 3s. was for maintenance grants and £60 in respect of special grants for convalescence, clothes, etc. All solicitors on the Roll for England and Wales are eligible for membership of the Association and are asked to write to the Secretary at 12 Clifford's Inn, Fleet Street, London, E.C.4, for further information. The annual subscription is £1 1s. (minimum) —life membership subscription £10 10s.

Owing to the co-incidence of the General Election with the February meeting of the MEDICO-LEGAL SOCIETY, this meeting is cancelled and will be replaced by an additional meeting in July.

# OBITUARY

MR. G. A. ATKINS

Mr. George Arthur Atkins, managing clerk to Messrs. Beaumont and Son, of London, E.C.2, and in their service for sixty years, died on 6th February, aged 74.

MR. J. ATTER

Mr. James Atter, of Melton Mowbray, who was a practising solicitor until his retirement about twenty years ago, died on 9th February. He was over 80 years of age, and had played cricket for Leicestershire and Association football for Leicester Fosse (now Leicester City).

MR. H. W. CLEAVER

Mr. Harold Willoughby Cleaver, deputy clerk to the Lancashire county justices at Lytham St. Annes from 1931 until he retired in 1946, died on 8th February at Lytham, aged 70. He was admitted in 1901.

MR. T. PEDDER

Mr. Thomas Pedder, solicitor, assistant registrar of the Liverpool Chancery Court until his retirement in 1947, died on 1st February, aged 72.

MR. W. W. SHEARMAN

Mr. Walter West Shearman, solicitor, of Sidcup, Kent, died on 9th February, aged 56. He was admitted in 1920.

# CENTRAL LAND BOARD

## Reduction of the Area of a Part VI Claim

The Central Land Board announce that they have considered the method of dealing with claims under s. 58 of the Town and Country Planning Act, which, if related to the whole of the area described in the claim, would probably be disqualified under s. 63, but might not be so disqualified if related only to a part of that area. According to s. 63, no payment can be made if the development value is (on average) £20 or less per acre, or one-tenth or less of the restricted value.

As an illustration, a claim may have been made for ten acres of land, whereas only one acre, adjoining a road, has development value. This development value might be, say, £150 for the erection of a house. The development value of the whole ten acres is, however (on average), less than £20 per acre.

In another case a claim may have been made in respect of a site with frontages to two roads, the one frontage being fully developed by a shop and the other being suitable, without injury to the shop, for the erection of garages. The restricted value of the whole is £7,500. The only development value resides in the land fronting the road at the rear which is suitable for the erection of garages. The development value (say £500) of the land under claim is less than one-tenth of the restricted value (£7,500).

In each of these cases, if the area of land to which the claim refers were suitable reduced, s. 63 might not apply.

The Board have decided that in cases of this description the claimant can be given an opportunity to reduce the area to which his claim relates if he so desires. Any claimant who decides to take advantage of this opportunity must do so on the understanding that if he does so the claim cannot be revived in its original form.

A claimant who thinks that his claim falls within this description should, in his own interest, inform the Board to this effect *without delay*. He will, in due course, receive from the Board a form S.1.D to complete. Where no such notice has been received the Board will themselves endeavour to draw the claimant's attention to this facility wherever it seems to them to apply, but they cannot guarantee that they will be able to do so in every case.

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